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ABSTRACT

Women are at a disadvantage under both Social Security and private employee pension plans because the retirement systems were set up at a time when most women were non-working spouses of employed men, a condition that no longer exists. Today women workers, divorcees, and widows of retirees often find themselves with inadequate retirement benefits because they have intermittent work histories due to being out of the labor force for years to bear and rear children and perform homemaking tasks. In some cases, women who have worked may receive less retirement income than wives of single-earner couples even though both couples have the same average monthly incomes. Other problems include those of divorced women who cannot collect pensions from their former husbands' retirement plans, low pensions because of women's generally lower wages, and loss of benefits by widows whose husbands did not take reduced pensions in order to provide survivor benefits. Proposals to reform Social Security include earning sharing, a double-decker system, inheritance of earnings credits, homemaker credits, and child care drop-out years. Proposals to change employee pension plans include options to increase survivor protection, earnings sharing of pensions for divorced spouses, and changes in employee pension plan provisions to provide commensurate pension benefits to short-service and low-wage workers or those who have interrupted careers or partial attachment to the labor force. (KC)

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# WORKING WOMEN, MARRIAGE, AND RETIREMENT

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with the help of Edith Fierst

President's Commission on
Pension Policy
August 1980

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## FOREWARD

The changing status of both women and men has significant implications under the public and private retirement systems in the United States. Social security and employee pension plans originally were designed to meet the needs of a society that was considerably different from the society we live in today. There is a need to reevaluate the present retirement structure's ability to meet current social and economic needs.

Three of the most significant changes have been the increased participation of women in the labor market, rising divorce rates, and the improved longevity of women relative to men. These changes imply that the traditional family structure--a breadwinning husband with a nonearning wife in a lifelong marriage--is now the exception rather than the rule for today's working population. Improvements in mortality rates have meant that the majority of women over age 65 are without spouses. These changes in family roles and marital status can have a direct bearing on retirement income.

A number of studies have examined different aspects of the issues involved with marriage, retirement income and women. This working paper relies heavily on the work of these past studies. More studies have been directed to problems under social security than problems under employee retirement plans. Therefore, the first section of this paper on social security is specific about problem areas and more definitive about options for change. The second section on employee plans is more speculative and exploratory.

This working paper was used as background information for the Commission's interim recommendations issued in May. The Commission made several preliminary recommendations in this area:

- Earnings sharing approach to social security, contingent upon further study.
- Mandatory survivor protection in either employee pension plans or life insurance plans.
- Consideration of employee pension assets in divorce settlements.
- Earlier vesting standards in employee pension plans.
- Universal minimum employee pension plans, subject to further study.

We are thankful for valuable help and assistance from Virginia Reno at the National Commission of Social Security and Sara Kaltenborn of the Justice Department. We also appreciate the useful comments made by Duke Wilson.

The Commission hopes that this synthesis of other studies will help focus attention on these issues. As with our other working papers, we appreciate any comments or suggestions about how to improve this study for our final report.

Thomas C. Woodruff
Executive Director
President's Commission
on Pension Policy

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## EXECUTIVE SUMMARY

Over one-third of unmarried women over age 65 have incomes below the poverty line. Their poverty is in part the result of their status as workers and spouses of workers under two components of the retirement income system: social security and employee pensions.

Due to traditional child care responsibilities, most working women have interrupted work histories. Although labor force participation for all women has increased 34 percent since 1940, many women still leave the workforce to bear and raise children.

Social security and employee pensions generally contain provisions which reward long-service workers. This traditional aspect makes it difficult for those with intermittent work careers to accrue benefits. Under social security, worker benefits are based on average lifetime earnings. Those with brief periods of covered employment have low average lifetime earnings and therefore low benefits. Provisions which emphasize long service in employee pension plans can result in either a forfeiture or reduction in benefits for part-time employees or employees who move in and out of the labor force.

Most of the issues discussed in this paper also apply to men who are homeworkers or low earners in marriages. However, because the vast majority of people affected are women, the issues are dealt with in that context.

### Women and the Social Security Program

When social security was established, most American women were full-time homemakers who depended on their husbands for financial support. However, since the 1930s, the role of women has changed dramatically. Today, most women are in paid

employment. In addition to this change in the economic role of women, the divorce rate has increased significantly over the past 40 years. Both of these developments have brought about a reexamination of the treatment of women under the social security program. While some of the current inequities and inadequacies of the system are remnants from the past, even fairly recent changes have failed to correct the disparate treatment that occurs under the existing system. While other problem areas exist, the paper focuses on three groups: widows, divorced spouses, and married women workers.

Widows are now entitled to social security benefits based on their deceased spouses' wage records. They may collect actuarially reduced benefits as early as age 60. Benefits are low to young widows because deceased spouses' earnings records receive inflation adjustment rather than wage adjustment after the workers' deaths and because many widows take early retirement awards. Another problem is that widows of two-earner couples may receive only one-half of the total family benefits, unlike survivors of one-earner couples who receive two-thirds of the total family benefits.

Most divorced women receive worker, rather than spouse, benefits. Their worker benefits may be low, however, because of years spent out of the labor force to raise children. For divorced women who do receive a spouse's benefit, that benefit is likely to be inadequate for a person maintaining a separate household. Further, a divorced spouse generally cannot receive a dependent's benefit unless the ex-spouse is collecting benefits.

Married women workers may feel unfairly treated because the current system is better suited for one-earner couples than for two-earner couples. Two-earner couples generally receive lower total benefits than one-earner couples whose Average Indexed Monthly Earnings (AIME) is the same as the total of the two-earners' AIMEs. Further, among two-earner couples with the same combined AIME, benefits can vary depending upon the proportion of the total AIME earned by each spouse.

Women and Employee Pensions

Many women, especially homeworkers, rely substantially on their husbands for financial support. While husbands are employed, wives share in the workers' wage. In retirement, spouses share in the workers' pension. When wives lose their husbands through death or divorce, they often lose income and their economic security.

There are several instances when widows do not receive continuing income from their husbands' pension plans. These instances can occur when the retiring husband does not elect to reduce his pension in order to provide continuing benefits to the wife after his death, when the husband dies before retirement, and in the event of divorce.

In recent years, divorced persons have received some compensation in divorce settlements from their ex-spouses' pension benefits that were accrued during marriage. This is a new phenomenon and is largely dependent upon state laws and court practices. While some divorce courts have implemented this idea, legal and actuarial questions exist on the appropriate method of allocating the pension asset between the two spouses.

There exists a large disparity in the average amount of employee pension benefits between women and men workers. This disparity is largely due to: (1) women's lower labor force participation and the lower wages generally provided for women's work, (2) lower incidence of pension coverage in positions filled by women and (3) a variety of rules and employee pension plan provisions that work against benefit accruals for short-term or intermittent employment.

Private pension coverage has not expanded significantly for either men or women during the 1970s. Within the private sector, working men are about one-third more likely than working women to be covered by employee pension plans. The difference in pension coverage rates for men and women is explained largely by their different employment characteristics. Women are less likely to have union status, more likely to work part-time, more likely to be employed in small firms, and more likely to fill positions in low paying industries and occupations.

The Employee Retirement Income Security Act (ERISA), enacted in 1974, is expected to significantly improve the likelihood that workers, and especially women workers, receive benefits. Although ERISA provides minimum standards for employee pension plans that will increase the proportion of workers eligible for benefits, some plan provisions still exist which particularly affect women with career interruptions. Current ERISA provisions allow exclusion of employees with less than 1,000 hours of service per year from the plan, rules that in some instances permit employers to disregard a worker's employment before a break-in-service, participation requirements which exclude workers under age 25 from the benefit plan and forfeiture of benefit accrual to workers who resign with less than 10 years of service.

Other frequently used plan provisions also prove disadvantageous for low-service or low-wage earners. Two examples are benefit formulas that include backloading, which places a smaller weight for earlier years of employment and a greater weight to later service years, and social security integration provisions, which result in proportionately small employee pension benefits to low wage earners.

Further, the use of sex-distinct mortality tables affects the benefits received by women. Under defined contribution plans, sex-distinct mortality tables result in either lower monthly benefits or higher contribution rates for women than men because, on average, women at age 65 are expected to live approximately four years longer than men.

## Conclusion

The retirement income systems have been challenged for not providing adequate income to many elderly women and for inequitably treating women in families and as workers. A variety of reforms to social security have been suggested which would correct problem areas. This paper discusses proposals for earnings sharing, a double decker system, inheritance of earnings credits, homemaker credits and child care

drop-out years. Proposals to change employee pension plans include options to increase survivor protection, earnings sharing of pensions for divorced spouses and changes in employee pension plan provisions to provide commensurate pension benefits to short-service and low-wage workers or those who have interrupted careers or partial attachment to the labor force.

These proposals for social security and employee pension plans recognize a variety of family structures. Today most women work, most women outlive their husbands, divorce rates are high, and the modern marriage is viewed as an equal partnership with shared responsibilities. These changes in behavior and values imply a need for changes in the retirement income systems if original goals of the systems are to be met.

# INTRODUCTION

Investigation of the financial problems of the aged show that an alarmingly high proportion of elderly poor are women, either single, divorced, or widowed. Roughly three-fourths of aged units with incomes below the poverty line are unmarried women (see figure 1). These elderly poor represent over one-third of all aged widows and divorced women. As their age increases, even a higher proportion of women, 42 percent over age 72, live in poverty.[1/]

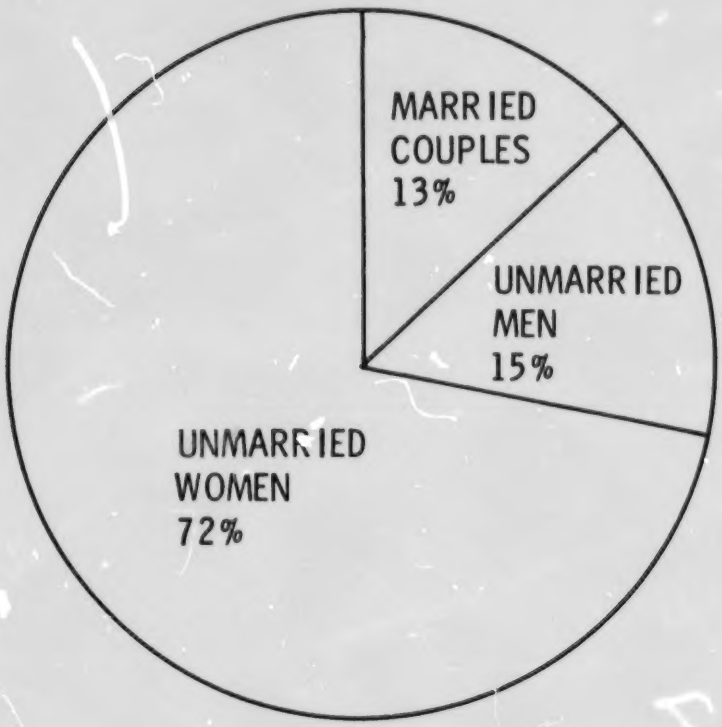
Several factors contribute to the hardships many women face in old age or upon losing their husbands through death or divorce. The central vehicles for providing financial security, social security and employee pensions, imperfectly assure women's security when they are no longer working or no longer married. For the most part, these systems link retirement income to one's previous work history and in some cases to current or prior marital status. Traditionally women have been disadvantaged in the labor market. Bearing and raising children make it difficult for women to establish themselves in the labor market where a continuous work pattern generally produces higher wages and an increased likelihood of gaining entitlement to retirement benefits. Historically women earn less than men and confront a variety of obstacles in advancing to high paying jobs. Low wages and short work careers in the labor force normally translate directly into low retirement benefits in old age. In many cases, retirement income systems drastically reduce or discontinue income to the family unit when the husband or father dies.

In addition, the longevity of women compared with that of men contributes to the hardships of older women. Currently there are 69 men for every 100 women in the population age 65 and over.[2/] This has occurred primarily because of women's longer life expectancy: 77 years at birth compared to 69 years for men.[3/] This disparity in

Figure 1

## WHO ARE THE ELDERLY POOR ?

The distribution of aged units[1/] with incomes below the poverty line,[2/] by marital status and sex, 1976




1/ MARRIED COUPLES ARE COUNTED AS ONE UNIT.
2/ FOR 1976 THE POVERTY LINE FOR THOSE AGE 65 OR OLDER WAS $3445 FOR MARRIED COUPLES AND $2730 FOR SINGLE PERSONS.

Source: U. S. Department of Health, Education, and Welfare, Social Security and the Changing Roles of Men and Women, 1979

x

life expectancies is not peculiar to the United States and exists in every other major industrial country.[4] What does this imply for women? With the tendency for women to marry older men, married women can expect to be widows in old age. Of women reaching age 65, seven out of ten are or will be widows.[5] Because the average length of widowhood is 18 years for those women who actually become widows,[6] assets from life insurance or retirement savings are likely to dwindle. Women financially unprepared to live without their husbands often find economic hardship in old age. Similarly, divorced women who rely on their former husbands for financial support may experience hardships when the ex-spouse dies.

As more women enter the labor market and remain for longer periods of time, income security for aged women may improve with the next generation. They would then become entitled to retirement income based on their own earnings. While women's participation in the labor market has increased, there are still interruptions in women's careers because of childbearing and child care. The economic problems facing many women in retirement are not likely to disappear if their work careers continue to be disrupted and current pension systems remain unchanged.

This paper discusses the issues related to women's income security summarized above. Many issues analyzed here also are problems for men who are spouses and homemakers or are financially dependent on their wives. However, their numbers are small. Of all men not in the labor force, only 2 percent as compared to 75 percent of women gave home responsibilities as the reason for not working.[7] In social security only one-half of 1 percent of men in 1978 claimed benefits based on their wives' earnings compared with 59 percent of women.[8] Therefore, the problems are formulated as women's with the discussion centering on women as the disadvantaged group.

This paper separately analyzes the two major retirement income systems, social security and employee pensions. The analysis provides a brief historical review and

identifies a variety of problems and issues that confront women. Where appropriate, different options for solving identified problems are presented, in other areas, directions for change are suggested. In presenting the various options, the diversity of viewpoints and arguments that bear on the issues are recognized.

Social security is a much studied and widely debated income maintenance program. A number of studies have addressed the treatment of women under social security. These studies have combined much data, sponsored a variety of analyses, and formulated a number of recommendations for reform. These recommendations are reviewed and presented as options for change in the next section.

The section on employee pensions covers a variety of issues confronting working women, widows, and divorced women. These problems have been less well studied than social security problems, in part because of the lack of extensive and complete data. While the problems can be identified, their magnitude cannot. Nor can the economic and social consequences of possible changes to employer pension systems be fully assessed. Some possible directions for change are presented, but a full assessment must await further study and research.

# I. SOCIAL SECURITY

## Historical Background

Social security was designed at a time when most American women were lifelong homemakers who depended upon their husbands for support. At that time, it seemed reasonable that retirement income payable to women through social security should be based on their status as dependents. Originally, social security provided only retirement benefits for eligible workers in industry and commerce at age 65, but in 1939 the system was changed to provide for dependent's benefits for wives and widows. The 1939 amendments entitled wives of retired workers to spouse benefits equal to 50 percent of their husbands' benefits and entitled widows to benefits based on their deceased husbands' benefits. No provisions were made for divorced wives.

The originators of social security regarded the wives' benefit as a minimum benefit to the homemaker. Its importance was expected to decrease as more wives became entitled to worker benefits. In 1939, the wives' benefit was an expedient means of increasing payments to the retired population group that needed it most--married couples--without significantly increasing long range costs.

Spouse and survivor benefits have always been subject to the dual entitlement rule. This prevents an individual from receiving a spouse benefit if she or he is entitled to a worker's benefit equal to or greater than the spouse's benefit. If the spouse's benefit is larger than the worker's benefit, the person receives an addition to the worker's benefit so that the total is equal to the spouse benefit. In effect, the individual receives the higher of the two benefits.

Many gender-based distinctions were included in the social security law which discriminated against men. The most notable was that husbands could not become entitled to benefits based on their wives' earnings. After 1950, men could receive

husbands' or widowers' benefits, but had to prove their financial dependence on the wife, and the wife had to meet a "recency of work" test. In 1977, the Supreme Court declared these requirements unconstitutional. This allowed husbands who retired from jobs not covered by social security to receive spouse's benefits if their wives received social security workers' benefits. To prevent this, the Congress passed legislation that offset income from a spouse's benefit by pension income earned through noncovered employment. Today nine gender-based distinctions remain in the law (Appendix A has a complete description of each).

Current Problems

Today the social security system in some respects no longer serves the society it was designed for 40 years ago. The role of women and family structures have changed dramatically since the 1930s. Now most women work for pay, although their work patterns vary. Some women will have lifelong careers in the paid labor force, others will temporarily leave the labor force to raise children and others will be lifelong homeworkers. In addition, the divorce rate has increased dramatically since the 1930s. Today, the probability is about one in three that a new marriage will end in divorce.[9/]

Because of the change in family lifestyles, the Social Security Administration (SSA) recently reviewed social security's treatment of spouses. In its comprehensive report, an excerpt of which appears in Appendix B, problems under the current system are well documented. Traditionally, the social security system is judged on two criteria: the ability to provide adequate income to workers or their survivors when earnings are lost due to retirement, disability, or death; and the ability to provide income equitably based on the worker's past earnings and contributions to the system. In many instances these two criteria are in conflict. The spouse benefit with the dual entitlement rule was enacted on adequacy grounds. While it clearly resulted in inequities between single persons and married couples, it was a minimum benefit for

wives living with their retired husbands and for widows. Today, the spouse benefit is inadequate for many women because of changes in lifestyles and work patterns and their increased longevity. At the same time, increased participation of women in the labor market accentuates inequities that have always existed with the spouse's benefit.

While the report, widely known as the HEW report, discusses a number of groups who are ill-served by the spouse's benefit, this paper focuses on old-age benefits for three groups: widows, divorced people and married women workers.

Widows. Widowed people, comprising about two-thirds of elderly poor units, are the largest group for whom old age income is inadequate.[10/] Survivors are entitled to receive social security benefits based on their deceased spouses' wage records in lieu of their own wage records. While in some instances this provides an adequate income, in three cases it may not.

First, if the spouse dies several years before the wife reaches retirement age, she will receive survivor benefits computed on an outdated earnings base. The deceased spouse's earnings record is adjusted by increases in wages up to the time of his death, and then adjusted by the inflation rate from the time of death to the survivor's retirement. All other beneficiaries have their entire earnings record adjusted by wage increases. Except for recent years, wages normally increase faster than prices. As a result, a widow's benefit is related to the standard of living at the time of her husband's death, rather than the standard of living at the time she begins receiving benefits.

Second, widows' monthly benefits are permitted on a reduced basis as early as age 60. At age 60, the benefit is reduced to 71.5 percent of its orignal value. It appears that most young widows do, in fact, take early retirement benefits.[11/]

Third, when the average income of the two families is the same, survivors of one-earner couples receive greater benefits than survivors of two-earner couples. As

illustrated in figure 2, two-thirds of the couple's social security benefits continue to the survivor of a one-earner couple, while only one-half of the couple's social security benefits continue to the survivor of a couple where each spouse earned equal benefits. This is not only inequitable, but it can create a financial hardship for the survivor of a two-earner couple because generally a surviving spouse needs more than half of a couple's income to maintain a similar standard of living.

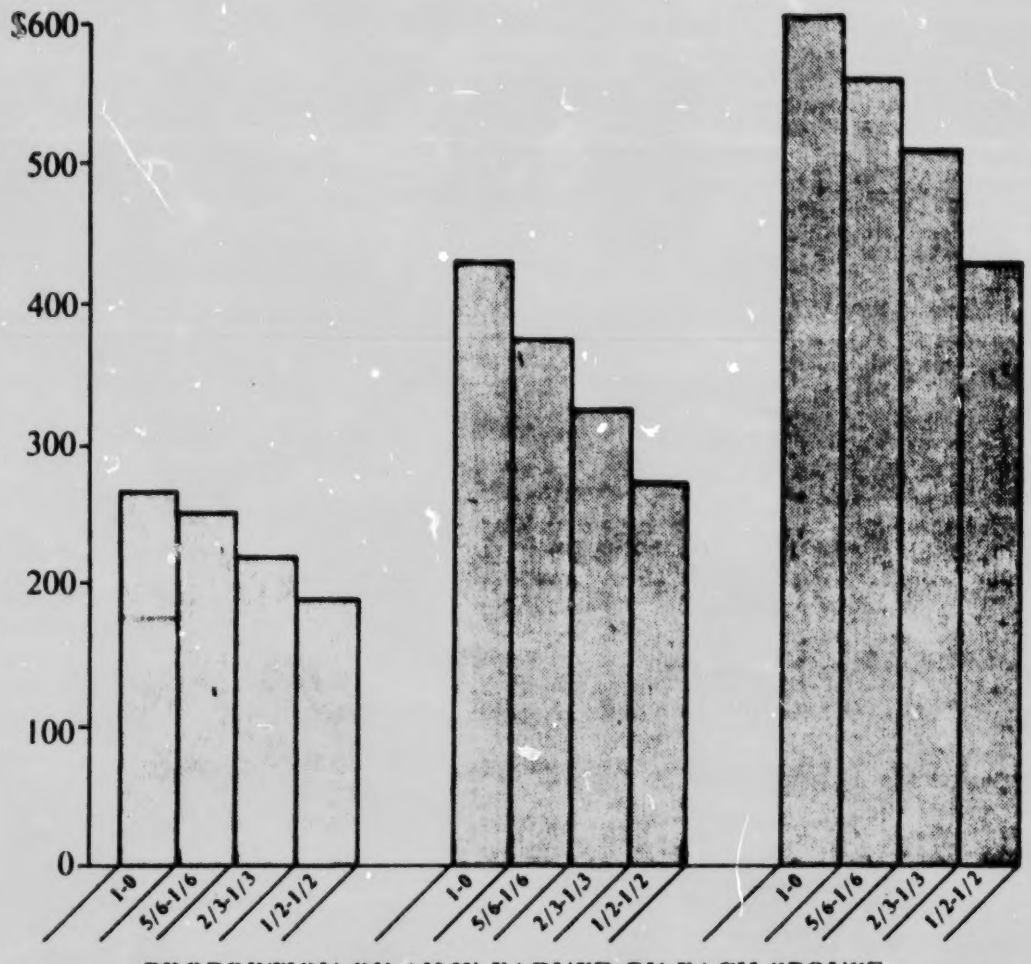
For very high income couples, or more precisely those couples with at least one partner who earned at or above the taxable wage base, all survivors receive the same benefit. All such survivors receive the maximum worker's benefit under social security, regardless of the portion of total wages earned by each spouse or the amount of family income earned above the maximum. While the benefits are equal among survivors, an inequity exists in the sense that the two-earner couple pays substantially more social security taxes than the one-earner couple.

Divorced Women. Changes have been made to the social security system in response to rising divorce rates. In 1965, the spouse's benefit (equal to 50 percent of the ex-husband's benefit) was provided to divorced women whose marriages lasted for 20 or more years. In 1977, the 20-year requirement was reduced to 10.

However, the changes still do not adequately deal with divorced spouses because most divorced people receive benefits based on their own work histories. About 85 percent of divorced women that were old-age beneficiaries in 1976 received a worker's benefit.[12/] (This proportion may decrease now that the marriage tenure requirement was lowered.) While their benefits are on average greater than married women's worker benefits, their benefits are one-fourth lower than single women's benefits and one-third lower than men's benefits.[13/] The low benefits of divorced women are at least partly attributable to years spent out of the labor market to raise children while married. Because of the dual entitlement rule, these women receive no compensation for years as a homeworker.

Figure 2

# MONTHLY SOCIAL SECURITY BENEFITS FOR SURVIVORS OF RETIRED COUPLES UNDER CURRENT LAW BY PROPORTION OF AIME* EARNED BY EACH SPOUSE




*AIME = Average Indexed Monthly Earnings. This is average lifetime couples earnings indexed by wage increases. It is used to calculate Social Security benefits and represents the portion of wages subject to the Social Security tax.

1-0 = One-earner married couple.

5/6-1/6 = Two-earner married couple, with one spouse earning 5/6 of the couple's wages.

2/3-1/3 = Two-earner married couple with one spouse earning 2/3 of the couple's wages.

1/2-1/2 = Two-earner married couple with each spouse earning 1/2 of the couple's wages.

Source: President's Commission on Pension Policy

Problems also remain for divorced women who receive a spouse's benefit. They are entitled to 50 percent of the ex-spouse's primary benefit, but only after the former spouse retires or reaches the age where the earnings offset no longer applies. When the former spouse dies, the spouse's benefit generally doubles. While these provisions may be reasonable for married couples, they do not seem so for divorced couples where the spouses are financially independent. For example, unless the former wife was receiving alimony or other financial support from the ex-spouse, there is little logic for the spouse benefit to double when the ex-spouse dies. For a marriage that lasts only a fourth of the worker's career, there is little rationale for basing the spouse benefit on the former spouse's entire wage history.

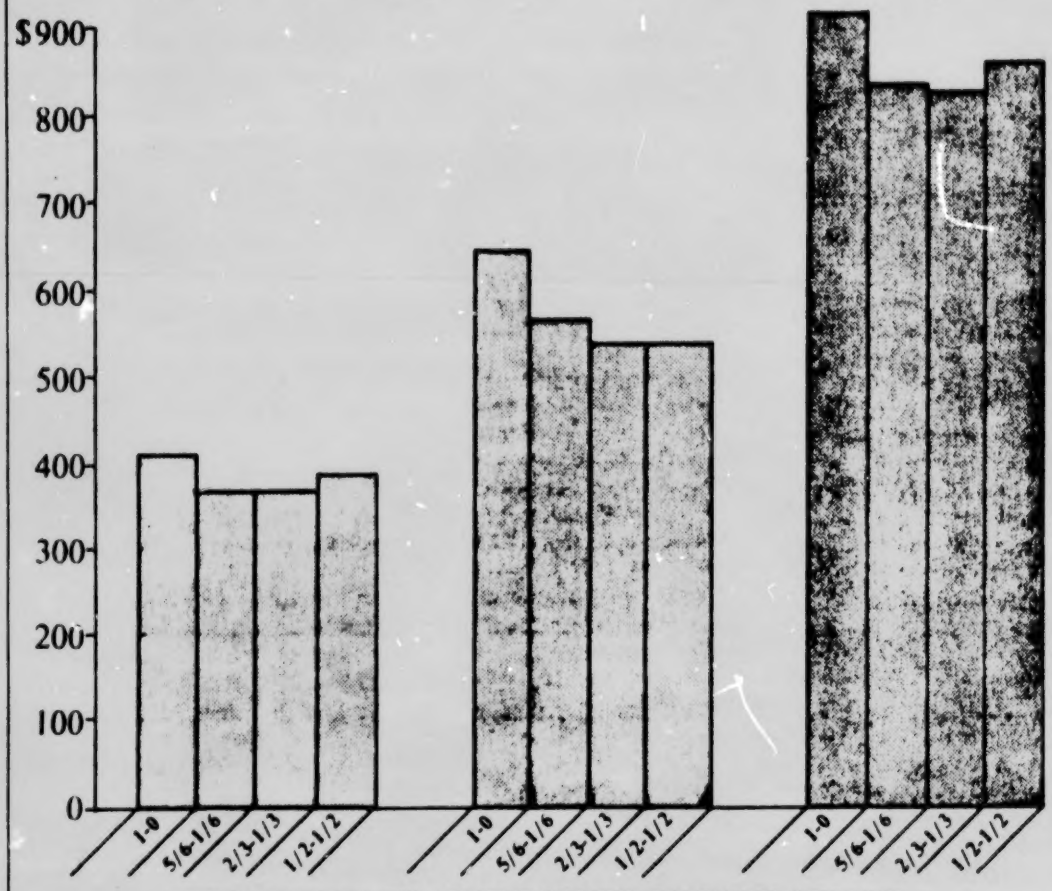
Of greatest concern from both an adequacy and equity point of view, is the two-thirds and one-third distribution of benefits between the worker and the divorced spouse. The spouse's benefit, which was designed as a supplement to the larger primary benefit, may be inadequate for maintaining a separate household. For a lifelong marriage, the two-thirds and one-third distribution conflicts with the philosophy of marriage as an equal partnership.

Women Workers. As more women join the labor force, another inequity under the current system has become controversial. Because of the dual entitlement rule, a two-earner couple who pays the same amount of social security taxes as a one-earner couple receives lower family benefits.

As shown in figure 3, for couples with the same earnings (and below the maximum wage base), one-earner couples receive greater benefits than two-earner couples. This results from the fact that two-earner couples receive little or no supplemental family income from the spouse benefit. One-earner couples receive a spouse's benefit equal to 50 percent of the primary benefit based on the family's total average income, while two-earner couples may not receive any supplemental spouse's benefit or, in some cases, a spouse's benefit based only on the higher earning spouse's

Figure 3

# MONTHLY SOCIAL SECURITY BENEFITS FOR RETIRED COUPLES UNDER CURRENT LAW BY PROPORTION OF AIME* EARNED BY EACH SPOUSE




**PROPORTION OF AIME EARNED BY EACH SPOUSE**

| COUPLE'S COMBINED AIME=$500 | COUPLE'S COMBINED AIME=$1000 | COUPLE'S COMBINED AIME=$2000 |
|---|---|---|

*AIME = Average Indexed Monthly Earnings. This is average lifetime couples earnings indexed by wage increases. It is used to calculate Social Security benefits and represents the portion of wages subject to the Social Security tax.

1-0 = One-earner married couple.

5/6-1/6 = Two-earner married couple, with one spouse earning 5/6 of the couple's wages.

2/3-1/3 = Two-earner married couple with one spouse earning 2/3 of the couple's wages.

1/2-1/2 = Two-earner married couple with each spouse earning 1/2 of the couple's wages.

Source: President's Commission on Pension Policy

benefit which reflects only part of the family's income. Another way to view this inequity is that the wife receives relatively little compensation for her earnings, since she would have received a spouse's benefit if she had not worked.

An exception to this situation occurs in comparing one and two-earner couples whose total earnings are substantially above the maximum wage base. All one-earner couples whose average lifetime earnings are above the taxable wage base receive the maximum worker's benefit plus a spouse's benefit. In contrast, all two-earner couples where both spouses earn above the taxable wage base receive two maximum worker's benefits. Two-earner couples with both spouses earning close to or above the taxable wage base receive greater benefits than the one-earner couple, but an inequity still occurs insofar as the one-earner couple receives a relatively higher benefit in proportion to taxes paid than does the two-earner couple.

Options for Change

Over its existence, various reforms have been suggested to correct inadequacies and inequities in the system. Most of the early proposals would have simply increased benefits to certain groups and also would have increased costs and created greater inequities.[14/] Reforms currently being debated, which are refined versions of those earlier proposals, include inheritance of credits, earnings sharing, the double decker system, drop-out years and homeworker credits.

Earnings sharing and the double decker system would require a major restructuring of the current system but would reward all covered work by either spouse. Drop-out years and homeworker credits would not change the major structure of the system and incorporate the expectation that many women will leave the labor force at least to have children. Women who work full careers would not benefit from these latter proposals. Inheritance of earnings credits is not a major restructuring of the system and applies only to widowed persons. The inheritance provision is typically

analyzed in conjunction with earnings sharing and double decker proposals, but is discussed separately because it could be implemented independently.

Inheritance of Earnings Credits. In order to provide greater social security benefits to widowed persons, over one-third of whom have incomes below the poverty threshold, it has been proposed that surviving spouses inherit the earnings credit of their deceased spouses. Unlike the current system, widow(er)s would be able to add their own social security earnings to their spouses' earnings (up to the individual social security taxable wage base for each year).

Typically, these proposals would provide greater or equal benefits to retired survivors of lifelong marriages. However, these proposals could provide lower benefits to widows of short marriages because they would inherit their deceased spouses' wage record only for those years of marriage.

Proposals differ in the amounts of credits that the surviving spouse should inherit. The 1979 Advisory Council recommends that survivors inherit 100 percent of the deceased spouses' earnings records. As a result, all survivors with the same family wages would receive the same benefits. Generally, retired survivors of lifelong marriages and survivors with some work history would receive benefits greater than or equal to those they now receive.

A proposal in the 1979 HEW report would enable survivors to inherit 80 percent of the total earnings of the couple, but not less than 100 percent of the earnings of the higher-earning spouse. Compared with the current system, this would provide the same benefits to survivors of one-earner retired couples and greater benefits to most survivors of two-earner retired couples. However, survivors of one-earner couples would still receive greater benefits than survivors of couples where each spouse earned half of the family income.

Another way to increase benefits to survivors which is not, strictly speaking, an inheritance feature, is to provide survivors with benefits equal to some proportion of the total family benefit. It is usually suggested that two-thirds of the couple's benefit continue to the survivor.

Earnings Sharing. The philosophy that marriage is a partnership, in which the contribution of each spouse is of equal importance and value, underlies the earnings sharing proposal. This proposal would address adequacy and equity problems concerning widows, divorced women and working women.

Earnings sharing applied to social security would credit each spouse with half the combined covered earnings of the couple. Each spouse would receive benefits based on his or her own social security record, which would include half the sum of the couple's combined earnings during marriage plus full credit for earnings when not married. The spouse's benefit would be replaced with a benefit based on one's own earnings record.

Although earnings sharing is a new idea for social security, the concept has been in use in community property states. Generally, community property states assume that income and assets obtained by either spouse during marriage are owned equally.

Representative Donald Fraser, U.S. Congress, introduced the first earnings sharing proposal in 1976. In response to the legislation, the Task Force on Sex Discrimination in the Department of Justice developed a comprehensive proposal.* From that early plan, HEW and the 1979 Advisory Council developed alternative proposals.**

Each proposal suggests various modifications to a pure earnings sharing approach. Proposals, for example, suggest some inheritance of credits or benefits to surviving spouses. Without this provision, survivors of lifelong marriages would

*The plan developed by the Justice Department was never adopted as a formal proposal and is not now advocated by the Department.

**The plan developed for the Advisory Council is illustrative; and was not endorsed by the majority of the Council members. The HEW proposal was included in the 1979 report, Social Security and the Changing Roles of Men and Women.

receive only half of the couple's social security income. It is generally accepted that to maintain an adequate standard of living one person needs more than half as much as two people living together. The inheritance provision together with earnings sharing generally would credit the survivor with two-thirds to four-fifths of the couple's combined benefit earned during marriage.

The proposals also suggest modification in the event of disability. The earnings sharing plan in the 1979 HEW report did not divide earnings credits in the event of a disability. The plan developed for the Advisory Council would not split earnings when only the high earner was entitled to benefits. The Justice Department plan included earnings sharing for disability purposes. When only one spouse is entitled to benefits, benefits based on both spouses' earnings would be calculated and the entitled spouse would receive two-thirds of the combined benefit amount. These modifications were suggested because complications arise when only one spouse is entitled to benefits and the spouses have different earnings.

The cost of earnings sharings proposals depends on the particular modifications adopted. It is estimated that the 1979 HEW plan would reduce long range annual costs by .06 percent of taxable payroll ($.5 billion in 1978)[15/] while the plan developed for the Social Security Advisory Council would increase annual costs by .35 percent of taxable payroll ($3.2 billion in 1978).[16/]

Earnings sharing would change the current system's redistribution of income within couples from the high earner to the low earner, so that benefits earned during marriage would be equally divided between the partners. This would have significant effect on divorced couples. Currently, the paid worker in a one-earner couple receives two-thirds of the total family benefit, leaving one-third to the dependent spouse.

In the event of divorce, the high earner in a couple, usually the husband, would receive lower benefits. Under earnings sharing, as shown in table 1, the one-earner in a 40-year marriage could suffer a 37 percent reduction in benefits, the one-earner in a

TABLE 1

PERCENT CHANGE FROM CURRENT LAW IN RETIREMENT BENEFITS FOR HIGHER EARNING DIVORCED SPOUSE AS A RESULT OF SHARING EARNINGS DURING MARRIAGE[1/]

| AIME of High Earner | 40-Year Marriage AIME of Low Earner of: | | 20-Year Marriage AIME of Low Earner of: | | 10-Year Marriage AIME of Low Earner of: | |
|---|---|---|---|---|---|---|
| | $500 | $ 0 | $500 | $ 0 | $500 | $ 0 |
| $ 500 | 0% | -29% | 0% | -13% | 0% | -4% |
| 1,000 | -19 | -37 | -8 | -16 | -3 | -5 |
| 1,500[2/] | -19 | -34 | -6 | - 9 | -2 | -3 |
| 2,000[2/] | -19 | -29 | -8 | -11 | -3 | -4 |

SOURCE: U.S. Department of Health, Education and Welfare. Social Security and the Changing Roles of Men and Women, February 1979.

[1/] Assuming 40-year worklife, and 35-year computation period, as in the mature system. A marriage of 5 years or less would result in no change.

[2/] AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

20-year marriage could suffer a 16 percent reduction in benefits and the one-earner in a 10-year marriage could suffer a 5 percent reduction in benefits. However, if the high-earning spouse remarries, the new couple's combined social security benefit may be equivalent to or greater than the benefits that the original couple would have received.

Income also would be redistributed between couples. Couples would receive benefits as if each spouse had the same Average Indexed Monthly Earnings (AIME). As shown in table 2, this results in one-earner couples receiving lower family benefits than under the current system. The spouse's benefit, which comprises one-third of the family benefit, would be eliminated, but benefits would be reduced by no more than 19 percent. Because of the progressivity of the benefit formula, when the sole earner's income is split between the spouses, each benefit is greater than half of the sole earner's benefit. Some two-earner couples with either very high or very low incomes would receive about 3 percent to 4 percent greater benefits under earnings sharing. There would be no change in benefits to couples in which both spouses earned equal income.

Proposals which would entitle survivors to inherit either credits or benefits from their spouses' records would provide greater or equal benefits to most, if not all, survivors of retired couples. Table 3 shows the percentage change in survivor benefits between the current system and the 1979 Advisory Council recommendation.

The redistributive effects of earnings sharing are criticized by some and supported by others. Objections to earnings sharing arise because some people would receive lower benefits than under the current system. In particular, most couples in which one partner earns more than 5/6 of the couple's joint income would be worse off. Higher earners of divorced couples would receive lower benefits if they do not remarry. On the other hand, earnings sharing is advocated because it provides equity between one-earner and two-earner couples, greater income to low earners or

## TABLE 2

### PERCENT CHANGE FROM CURRENT LAW IN TOTAL MONTHLY BENEFITS TO MARRIED COUPLES IN A LIFELONG MARRIAGE UNDER EARNINGS SHARING

| AIME | Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|
| | 1 - 0 | 5/6 - 1/6 | 2/3 - 1/3 | ½ - ½ |
| $ 250 | -15% | -19% | -10% | 0 |
| $ 500 | - 6 | 4 | 4 | 0 |
| $ 750 | -12 | - 1 | 0 | 0 |
| $1,000 | -16 | - 4 | 0 | 0 |
| $1,250[1/] | -16 | - 7 | 0 | 0 |
| $1,500[1/] | -12 | - 6 | 0 | 0 |
| $1,750[1/] | - 8 | - 1 | 0 | 0 |
| $2,000[1/] | - 6 | - 3 | 3 | 0 |

SOURCE: U.S. Department of Health, Education and Welfare. Social Security and the Changing Roles of Men and Women, February 1979.

[1/] AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

TABLE 3

PERCENT CHANGE FROM CURRENT LAW IN MONTHLY BENEFITS FOR AGED SURVIVORS OF LIFELONG MARRIAGES UNDER THE 1979 ADVISORY COUNCIL ON SOCIAL SECURITY RECOMMENDATION[1/]

| AIME | Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|
| | 1 - 0 | 5/6 - 1/6 | 2/3 - 1/3 | ½ - ½ |
| $ 500 | 0% | 11% | 25% | 42% |
| $1,000 | 0 | 14 | 33 | 59 |
| $1,500[2/] | 0 | 8 | 24 | 52 |
| $2,000[2/] | 0 | 9 | 20 | 41 |

SOURCE: U.S. Department of Health, Education and Welfare. Social Security Financing and Benefits: Reports of the 1979 Advisory Council on Social Security, 1979.

[1/] The Advisory Council recommendation would entitle the survivor to inherit 100% of the deceased spouse's wage record.

[2/] AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

homeworkers from divorced marriages and, when combined with an inheritance provision, greater income to widowed persons.

Implementation of earnings sharing requires careful planning to avoid the creation of some anomalies or problems. The 1979 Social Security Advisory Council stated in its report:[17/]

> "The majority of the Council finds that some system for the sharing of earnings is the most promising approach to these issues. (However) because of the complexity and far-reaching implications of the changes that would occur under earnings sharing, and because some problems remain in all specific plans the council has seen, the majority of the advisory council is not prepared to endorse a full-scale earnings-sharing plan at this time."

Complications arise when one spouse becomes eligible for benefits before the other spouse does and the spouses have different actual earnings.* In these cases, the one benefit may not accurately replace earnings lost due to disability or retirement. Pure earnings sharing requires that the social security benefits will be based on half of the couple's combined earnings. If the high earner in a couple becomes eligible for benefits before the lower earner becomes eligible, the benefits will not adequately replace lost earnings because half of the couple's combined earnings is less than the person's own earnings. For the low earner in a couple, the opposite is true: half of the couple's combined earnings is greater than the person's own earnings and therefore benefits may be excessive.

There are several ways to deal with this problem. The plan in the HEW report splits earnings when one spouse reaches age 62. This would include the anomaly described above. The Justice Department's plan would base benefits on two-thirds of

*When only one spouse is eligible for retirement benefits, complications can arise under the current system for one-earner couples. If the earner retires but the spouse has not reached retirement age, the family receives only two-thirds of their total benefit. Also, if the nonpaid spouse reaches retirement eligibility first, she cannot receive any benefit until the earning spouse retires, dies, or exceeds the age limit on the earnings test.

the couple's combined earnings when only one spouse is entitled to benefits. This would be equivalent to what now occurs when, in a one-earner couple, only the earner is eligible for benefits. Another option which was discussed in the HEW report is to split wage records only when both spouses are entitled to old-age benefits or at divorce. When only one spouse of a married couple retires, benefits would be based on his or her own wages, which is similar to the current system. When the second spouse retires, benefits would be recomputed based on split earnings. While this would provide benefits that accurately replace lost earnings, it would create a divorce incentive when only the low earner is entitled to old age benefits.* The plan developed for the Advisory Council is more generous than the other proposals. It would entitle the high earner who retires or becomes disabled to a benefit based on his own wages. When the low earner retires or becomes disabled first, benefits would be based on split earnings.

Similar to the current system, complications arise because social security is not universal. When one spouse works in covered employment and the other spouse works in noncovered employment, the couple's total benefits from noncovered employment and social security may be excessive because the covered earnings would be split equally between both partners. Thus, the progressivity of social security benefits would give the couple a relatively high benefit originally intended only for low-income families.

In addition, earnings sharing could have an awkward effect on employee pensions that are integrated with social security using direct offset formulas. Under such plans, the employer decreases the worker's pension by some portion (generally 50 percent) of the worker's social security benefit. If earnings sharing were in effect, the higher earner in a marriage would receive a lower social security benefit than under

*The low earner would receive a higher benefit when earnings are shared. Until the high-earning spouse is retired, earnings sharing would be possible only upon divorce.

the current system and, therefore, would receive a larger employee pension. The opposite would be true for the lower earner in a marriage: the social security benefit becomes larger under earnings sharing and the employee pension would be reduced accordingly. Some employers would have to modify their pension plans, and the IRS rules on qualifying integrated pension plans would probably need to change.

The Commission recommended in its interim report that social security should employ an earnings sharing approach with an inheritance provision for survivors. However, the Commission recognizes that there are several problems in implementing such a system and will continue to study such proposals.

Double Decker System. A double decker social security system, first suggested in the 1930s, is receiving renewed attention because it addresses some of the grievances concerning the treatment of spouses under the current system. It would eliminate the need for a spouse's benefit and would entitle homeworkers to benefits in their own right. This system would be used in conjunction with earnings sharing and inheritance of a deceased spouse's credits by the surviving spouse. Without these two provisions, a double decker system would not address the needs of divorced or widowed people.

A double decker system would establish two tiers of social security benefits. The first tier benefit would be a minimum benefit paid to all aged and disabled persons, whether or not they had covered employment. The second tier benefit would be directly proportional to covered earnings.

Canada, Sweden, Finland and the United Kingdom, among other countries, have double decker social security systems. Only the Canadian system provides for earnings sharing between spouses, and then only at divorce. In most countries, surviving wives may receive a portion of their deceased spouses' earnings-related benefit. However, in some cases, these benefits would be a substitute for the survivors' own earnings-related benefits.

The redistributive effect between couples of an earnings sharing feature would be eliminated under a double decker system, because the splitting of the wage record between the two spouses does not affect their total family benefit. Under a double decker system earnings sharing would apply only to the second tier benefit, which is a constant percentage of wages. If, for example, the second tier benefit equaled 30 percent of earnings, then, under earnings sharing, each spouse would receive 15 percent of the couple's combined earnings. The only redistributive effect occurs between the two spouses, and not between couples. In contrast, if earnings sharing were applied under the current system, some couples would receive lower benefits than they would without the earnings sharing feature, while a few couples would receive greater benefits.

In the past, the double decker proposals were rejected because inequities and excessive benefits could result. It was argued that it would be unfair to provide the first tier of benefits to those employed persons not covered and, therefore, not taxed by social security. Most workers in noncovered paid employment are covered by a generous employee pension plan. An additional first tier benefit from social security would be unnecessary and excessive in these cases.

The second obstacle to adoption of a double decker system has been the difficulty in setting benefits for the first tier and setting percentages for calculating the second tier benefit. Opponents argue that the level of first tier benefits would be determined on the basis of political considerations. Some opponents fear that the first tier benefit would expand too greatly and thus weaken the contributory nature of the system, while other opponents fear that the first tier benefit would either be set too low or evolve into a means-tested benefit when program costs are considered too high.

A double decker system would be a significant departure from the current system because it explicitly separates the welfare aspect from the contributory aspect and changes the distribution of benefits. The distribution, of course, depends upon the levels set for the first and second tier benefits.

The 1979 HEW report analyzed a comprehensive double decker plan designed to keep long-range costs roughly equivalent to those under the current system. Under this cost constraint, there is a variety of possible combinations for the levels of the first and second tier. For illustrative purposes, $122 per month, the present minimum benefit, was chosen for the first tier benefit.* Second tier benefits were set at 30 percent of the person's AIME in covered earnings. Surviving spouses would inherit enough credits to receive 80 percent of the earnings credits of the couple, or, if larger, 100 percent of the higher earner's credits. Earnings sharing would be applied only in the event of divorce because it would make no practical difference in benefits for married couples.

Table 4 shows that in the plan presented in the HEW report, some would receive greater while others would received lower benefits than under the current system. The most dramatic difference would occur for very low income couples. Depending on the proportion of income earned by each spouse, benefits would increase between 6 percent and 31 percent for couples with a combined AIME of $250 or less. Other couples who normally receive a spouse's benefit under present law would receive lower benefits under a double decker system. When a one-earner couple has an AIME greater than $420, the homeworker's first tier benefit would be lower than the spouse's benefit under current law. Benefit reductions from present law for one-earner couples would be, at most, 17 percent.

*While the first tier represents the social welfare aspect of the program, other welfare payments would still be necessary for some persons when the first tier benefit is so low.

TABLE 4

PERCENTAGE CHANGE FROM CURRENT LAW IN TOTAL MONTHLY BENEFITS TO MARRIED COUPLES IN A LIFELONG MARRIAGE UNDER A DOUBLE DECKER SYSTEM

| AIME | Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|
| | 1-0 | 5/6-1/6 | 2/3-1/3 | ½-½ |
| $ 250 | 11% | 6% | 18% | 31% |
| 500 | -3 | 7 | 7 | 3 |
| 750 | -11 | 0 | 1 | 1 |
| 1,000 | -16 | -4 | 0 | 0 |
| 1,250[1/] | -17 | -7 | -1 | -1 |
| 1,500[1/] | -13 | -7 | -1 | -1 |
| 1,750[1/] | -10 | -3 | -2 | -2 |
| 2,000[1/] | -8 | 0 | 1 | -2 |

SOURCE: U.S. Department of Health, Education and Welfare. Social Security and the Changing Roles of Men and Women, February 1979.

[1/] AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

TABLE 5

PERCENTAGE CHANGE FROM CURRENT LAW IN MONTHLY BENEFITS FOR AGED SURVIVORS IN A LIFELONG MARRIAGE UNDER DOUBLE DECKER SYSTEM

| AIME | Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|
| | 1 - 0 | 5/6 - 1/6 | 2/3 - 1/3 | ½ - ½ |
| $ 250 | 3% | 3% | 22% | 49% |
| 500 | 0 | 1 | 11 | 26 |
| 750 | - 1 | - 1 | 11 | 30 |
| 1,000 | - 2 | - 2 | 11 | 33 |
| 1,250[1/] | 0 | - 2 | 12 | 35 |
| 1,500[1/] | 7 | 0 | 12 | 37 |
| 1,750[1/] | 13 | 6 | 12 | 38 |
| 2,000[1/] | 18 | 11 | 18 | 39 |

SOURCE: U.S. Department of Health, Education and Welfare. Social Security and the Changing Roles of Men and Women, February 1979.

[1/] AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

When combined with earnings sharing, redistribution of income would occur between members of a couple.* Although the combined couple's benefit remains constant in a double decker system, earnings sharing at divorce would result in the lower earner during the marriage receiving greater benefits and the higher earner receiving smaller benefits.

The proposed inheritance of credits by surviving spouses would provide most survivors greater benefits. As shown in table 5, some nonpaid surviving spouses of basically one-earner retired couples would receive slightly less income under this proposal. Survivors of two-earner couples where both partners earned equal income would receive one-third to one-half greater benefits than they do under the current system.

Drop-Out Years. Proposals have been made to drop years spent out of the work force caring for young children from the averaging period used to calculate benefits. Social security benefits are based on covered wages over one's working life. These wages are averaged over the period the worker reasonably could have worked in covered employment. Under current law, the averaging period is 35 years for persons reaching age 62 in 1991 and thereafter. Years spent out of the paid labor market or in jobs not covered by social security lower the average wage and, thus, benefits.

By dropping those years of low or zero earnings, average monthly earnings and, therefore, social security benefits would be increased for those who interrupt employment to bear and raise children. Child care drop-out years proposals, in general, are based on the premise that the job of caring for one's own young children is of sufficient importance and value to society at large that it should not reduce one's future retirement benefit.

*The plan in the HEW report recommended earnings sharing only upon divorce.

Several countries permit child care credits under social security. Swedish women who leave the labor force are credited with up to nine months of pension accruals for each child they bear. In France, pension accruals are provided for up to two years.

A drop-out years feature could limit the number of years allowed per person. Most proposals limit child care credits to those years when a child is preschool age--anywhere from one to seven years old--and limit the number of drop-out years allowed per person to from one to 20 years.

In addition, a proposal could limit applicability of drop-out years to parents with no or only minimal earnings, or could allow drop-out credits for any eligible year where earnings are lower than an individual's career average. In the former case, a parent would be worse off, in terms of future social security benefits, by earning a few dollars than by not working at all. This work disincentive would be avoided if no earnings limit applies, but costs would be higher than under the more restrictive approach.

A proposal also could limit eligibility to one parent--presumably the parent with the lower earnings or who suffers the greatest reduction in earnings--or could permit both parents to qualify for credits. Permitting drop-out years to both parents anticipates flexibility in the roles of mothers and fathers in that both parents could work part-time in order to raise young children. However, costs would be greater under this case than when only one parent is entitled to credits.

Supporters say that parents should not be penalized by receiving inadequate benefits from the social security system and that society at large should bear this cost. It is also argued that drop-out proposals specifically address the work patterns of many women today. The majority of women are attached to the labor force, but some may interrupt or reduce employment when children are young.

Studies indicate that drop-out credits would provide 35 percent of all women with benefits that are at least 5 percent higher than current system benefits.[18] Divorced women are particularly likely to benefit from the child care drop-out years proposal. After divorce, most women are in the labor market, but at retirement, they receive inadequate benefits because of gaps in employment while married and rearing children.

On the other hand, drop-out proposals do not address the varied labor force participation patterns that have emerged in recent years. Unlike more comprehensive earnings sharing proposals, drop-out credits would not benefit women who work in paid employment most of their lives or women who never work in paid employment.

New equity problems would be raised for groups who do not qualify for drop-out credits. Parents who continue working full-time and make other child care arrangements would pay taxes that might not result in greater social security benefits at retirement. Adequacy questions also would arise if, as data indicate, low-income families with preschool age children are more likely to have both parents working.[19]

A question also arises as to whether drop-out credits should be given for time spent outside the work force on other activities considered socially beneficial. For example, some might argue that people in volunteer work, who work for nonprofit institutions, who care for aged or disabled parents, who go to school or who are unemployed involuntarily should receive such credits.

Perhaps the greatest obstacle to adoption of a drop-out years proposal is cost. These proposals are expensive. Very limited plans were developed by the 1979 Social Security Advisory Council which restricted credits to one parent when earnings for eligible years were below $1,040. When two drop-out years were permitted per child, long range costs increased by .35 percent of taxable payroll ($3.2 billion in 1978).[20] The cost of a drop-out years proposal could be offset if spouse's benefits were reduced or eliminated.

Homeworker Credits. Under the current social security system, spouse's benefits are an implicit though imperfect means of rewarding homeworkers. Spouse benefits are inadequate for persons who both work for pay and are homeworkers because they may receive no credit for their work at home.

Several proposals have suggested replacing the spouse's benefit with explicit homeworker credits. Under these proposals, credits earned from work at home would be added to credits earned from work in the market. All homeworkers would then acquire their own benefits independent of their spouse.

Homeworker credits are used in other countries. In the United Kingdom, West Germany and Japan, voluntary contributions to the social security system are permitted by homeworkers. In Japan, where the system provides benefits in excess of the value of contributions paid, 80 percent of the homeworkers participate.[21/]

One obstacle to providing homeworker credits is the difficulty in determining how much credit the homeworker should receive. Suggestions range from having the Secretary of HEW determine the value of homeworker services to using the median wage of all workers or all women workers. Homeworkers may feel that a uniform rate would not accurately reflect their service at home. People whose wages are higher when working in the paid labor market would still be disadvantaged for years spent as a homeworker.

Another obstacle is defining who qualifies for homeworker credits. Men as well as women would have to be considered. It would have to be determined whether married people would be entitled to credits and whether single or divorced people with children would qualify. Perhaps the only nonworking group excluded would be single people without children. Some persons may work only part time in order to maintain the household, yet they would receive no homeworker credit. Working couples could argue that they perform household services at the expense of their leisure time, yet they receive no additional credits.

Financing also presents obstacles to the adoption of such plans. Some proposals would require homeworkers to contribute to the social security system at the self-employment rate, which essentially treats work at home as covered employment. Other proposals would automatically provide homeworkers with social security credits, paid either by higher payroll taxes or by general revenues.

On the one hand, it can be argued that homeworkers should contribute taxes for their social security credits. Some argue that the current system subsidizes individuals who receive spouse's benefits without contributing taxes. While social security intentionally subsidizes low income people, many spouses who receive dependent's benefits are in high income families. Requiring homeworker taxes would eliminate some problems with part-time workers and couples who probably would not object if they were excluded from such an arrangement.

On the other hand, requiring homeworkers to pay for credits could cause financial hardship. If women leave the market to bear children, family income is relatively low because the wife's wages are absent and the family incurs additional expenses from childbirth. Mandatory social security taxes for the nonpaid spouse probably would be resented.

Voluntary contributions to social security would help determine who qualifies as a homeworker and what the value of their services are. Each person could determine her own status and the value of her home work. The major drawback of this arrangement is that low income people would probably not contribute and, thus, not receive additional benefits. These are the individuals originally targeted for spouse's benefits and perhaps the most in need of social security income in old age or when disabled.

## II. EMPLOYEE PENSIONS

### Historical Background

The first employee pension plans in the U.S. were established in the late 1800s. By 1930, many of the large industrial employers had implemented retirement plans that covered about 15 percent of private sector employees in commerce and industry.[22/] The purpose of these plans was to replace some income lost through retirement to long-service employees. Few of the early plans had deferred vesting provisions.

Because few women had long careers, it is unlikely that many received worker's benefits, but some women did receive benefits as widows of retired workers. In 1925, about one-fourth of the large industrial plans provided some benefit to survivors of retired workers. However, these benefits were not lifetime annuities. Most often, widows received reduced payments for one year or an amount equal to the remainder of money set aside in the participant's account. About one-third of the large industrial plans provided life insurance benefits to survivors of workers who died before retirement.[23/]

In the 1940s and 1950s, private pensions expanded in both coverage and benefits. One reason was the need to increase compensation to employees during World War II because of wage and price controls. Another reason was a series of legislative decisions that made pension plans subject to union bargaining. By 1950, 30 percent of employees in commerce and industry were covered by private pension plans.[24/]

Coverage for survivors has continued to expand in recent years. A 1971 Bureau of Labor Statistics (BLS) survey showed that in addition to group life insurance benefits, survivor benefit protection was automatic for about half of the workers in large private pension plans and 10 percent of the workers in plans covering less than

5,000 employees.[25] Typically these plans provided benefits to survivors of workers who died before retirement, and almost all of the largest plans provided post-retirement survivor benefits. Typically, coverage was limited to long-service employees. For those who qualified, benefits were based on either a straight percentage of the worker's accrued benefit or a flat dollar amount. Usually the benefits were paid over the survivor's lifetime, although some plans discontinued benefits at age 62 or when the spouse remarried and benefits were reduced based on the survivor's age. In plans covering one out of seven employees, survivor benefits were only available to female spouses.

In addition to automatic survivor benefits, joint and survivor options were available in some employee plans. If the participant elected this option, the worker's pension was reduced but some portion of the benefit continued to the surviving spouse. It appears that few workers exercised this option. Participants may have been unwilling to receive lower benefits, may have been ignorant of the provision, or may have had a sufficient estate or insurance to leave to their survivors.

The enactment of ERISA in 1974 has several important implications for private sector survivor benefits, benefits for divorced spouses and worker benefits. ERISA requires a joint and survivor provision in most pension plans, strengthens the concept of a pension as a worker's property right and sets minimal standards for participation and entitlement of worker benefits. The issues related to these developments are discussed in the next section.

The largest public pension program, the federal Civil Service Retirement System, was established in 1920. Initially, no survivor benefits were available. Legislation in 1939 permitted a worker to provide a survivor annuity to any named beneficiary, in which case the worker's pension was actuarially reduced to reflect the beneficiary's age, sex and amount designated for the survivor annuity. In 1948, preretirement survivor benefits were extended to spouses of employees with at least

five years of service who died in active service. Originally, preretirement survivor benefits were limited to female spouses, but 1949 amendments extended benefits to dependent husbands, and in 1962 all survivors regardless of sex or dependency status were included.

Major changes in survivor benefits since 1939 have made CSR survivor benefits more comparable to those of social security. Today, preretirement survivor benefits generally are available to surviving spouses of employees with at least 18 months of covered service. Postretirement survivor benefits are available if the worker elects the joint and survivor option. If elected, the participant's pension is only slightly reduced to reflect the expected benefits to the surviving spouse. Divorced spouses are ineligible to receive benefits. Currently, most married participants elect the joint and survivor option. Over 95 percent of married men employees and 60 percent of married women employees entering retirement elect survivor protection for their spouses.[26/]

Current Problems

Men are twice as likely as women to receive employee pensions, and when women do receive pensions they are typically one-half the amount of men's, as seen in table 6. These statistics reflect the fact that pensions traditionally have been provided only to long service workers and occasionally to their families when the worker died. In the past 40 years, the majority of women had only minimal attachment to the labor force. Therefore, it is not surprising that few older women now receive employee pensions.

In the past, survivor benefits to spouses of retired workers were available in only some plans and employees typically had to choose such coverage. Either few workers chose the joint and survivor provision or plans did not make this option available. Women who divorced generally lost any opportunity to receive survivor benefits or any portion of their former spouses' pensions.

TABLE 6

EMPLOYEE PENSIONS FOR PEOPLE AGE 65 AND OLDER, 1976

| | Percent Receiving Pension[1/] | Median Annual Pension Benefit |
|---|---|---|
| WOMEN[2/] | | |
| All | 18% | |
| Public Employer | 9% | $2,750 |
| Private Employer | 9 | 1,340 |
| MEN | | |
| All | 38% | |
| Public Employer | 13 | 4,830 |
| Private Employer | 25 | 2,060 |

SOURCE: U.S. Department of Health, Education and Welfare, Social Security and the Changing Roles of Men and Women, February 1979.

1/ Percentage of total population age 65 and older.

2/ Women receiving survivor benefits from employee pensions are included with women receiving pensions based on their own work.

The outlook for the future is much brighter. The majority of women now work and they appear to have more stable attachment to the labor force. As a result, many more young women are expected to earn pension benefits. Many more survivors are likely to receive retirement income protection because plans are now required to provide a joint and survivor option and some plans mandatorily provide such protection to married employees. Recently, pensions have been considered in some divorce settlements and some divorced women are receiving part of their former spouses' pensions, either at the time of divorce or at retirement.

While many more women are expected to receive employee pensions in the future, some obstacles still remain. The following discussion focuses on problems facing widows, divorced people and women workers.

Widows. Testimony to the Commission indicates that some, and perhaps many, widows are left without survivor benefit protection from their deceased husbands' pension plans. On average, women live seven years longer than men and typically women marry older men. Thus, most women can expect to be widows in old age. In some cases, these women assumed that some portion of the employee pension would be provided to them as widows, and then are strained financially when they do not qualify for benefits.

The new pension reform law did much to strengthen survivor benefit provisions. Before 1976, survivor benefit protection was not required in pension plans. Now, ERISA requires that most pension plans provide a joint and survivor option to workers when they retire. Generally, the joint and survivor provision actuarially reduces a worker's pension and provides 50 percent of the worker's benefit to the surviving spouse, but plans may reduce a worker's pension by less than the full actuarial amount and/or provide more than 50 percent of the benefit to the survivor. ERISA requires that at retirement, the joint and survivor option is automatically provided unless the employee specifically does not elect the provision.

There are six circumstances where plans are not required to pay survivor benefits, although it should be noted that some plans provide survivor protection in these instances even though they are not required by law to do so. Those circumstances include the following:

(1) When an employee reaches retirement, he may choose not to take the joint and survivor option because it reduces the worker's pension. The law does not require that the spouse be consulted or informed of this decision.

(2) Plans may require that a spouse be married to the worker both at the time of retirement and at the worker's death in order to qualify for survivor benefits. This means that divorced spouses and spouses from marriages occuring after the worker retires would not qualify for benefits.

(3) The joint and survivor benefit need not be available to employees before they reach the early retirement age or 10 years before the plan's normal retirement age, whichever is later. Therefore, if the worker dies in active employment before this age, the surviving spouse would not qualify for benefits.

(4) A joint and survivor benefit need not be automatic before employees reach retirement; employees must specifically elect this option. Therefore, if the worker dies after reaching the early retirement age but before actually retiring and has not elected the joint and survivor option, the spouse will not receive any retirement benefits.

(5) Plans may disregard an employee's preretirement election of the joint and survivor annuity if the employee dies from a nonaccidental death within two years of the election.

(6) If a worker leaves a company with a vested benefit, the joint and survivor benefit is not available until the person applies for retirement benefits. Given that deferred vested benefits typically are not available until the normal retirement age, people who die before this age have no opportunity to provide survivor protection to their spouses through the retirement plan.

Divorced Women. Divorced homeworkers or low earning spouses who have not accumulated credits toward retirement face potentially serious problems in old age. The recent increase in divorce rates, the new pension reform law, and changing attitudes towards marriage have focused attention on divorce settlements that award a person a share in their former spouse's pension. While some settlements consider

pensions acquired during marriage part of the couple's property and, therefore, subject to division, other settlements ignore pensions. Even when courts divide pension assets, the settlement does not necessarily result in retirement income for the nonemployee spouse.

The treatment of pensions in divorce settlements varies greatly by state. The eight community property states view marriage as an equal partnership and, upon divorce, divide property acquired during the marriage equally between the spouses. Seven additional states have adopted the Uniform Dissolution of Marriage Act that also equally divides property acquired during marriage. However, some states do not consider future entitlement to a pension as the employee's property, especially if the pension is not vested. Therefore, pension assets are not valued in some divorce settlements, even in states where marriage is viewed as an equal partnership. The 12 common law states equally divide only jointly held assets, but some allow the court to "equitably" distribute property at divorce, which may or may not include pension assets. The other 23 states generally give the courts discretion to divide a couple's assets in a fair manner.

Recently, the courts have begun to grapple with the treatment of pensions in divorce settlements. However, there are several unresolved issues in allocating pension entitlement between the divorced spouses. These issues will be discussed in the section on options for change.

Women Workers. The difference between coverage and benefit levels between men and women workers stems from three sources: women's lower labor force participation and the lower wage typically provided for women's work, lower pension coverage in jobs filled by women, and various rules and provisions of employee retirement systems. Only the latter two sources are within the purview of the Commission. However, women's labor market position is first briefly discussed for background purposes.

First, the disadvantages women experience in the labor market have direct implications for their income in retirement. Women's employment in nonunionized, low-paying occupations results in low rates of pension coverage, their shorter and interrupted work-lives result in a lower probability of entitlement to benefits when they are covered by pension plans and their lower wages and shorter job tenure result in lower benefits when they do receive pensions.

Although some women's wages have improved as career opportunities have opened up to them, the median wage of women working full time is about 60 percent of men's. Gains by some women have been offset by the recent influx of unskilled and inexperienced women in the labor market. Women's labor force participation increased from 17 percent in 1940 to 51 percent in 1979. Today, women comprise 42 percent of the labor force. Less than 13 percent of women workers in 1972 and 16 percent in 1978 had union membership, which is usually associated with high wages.[27/] While this gain was substantial in view of declining union memberships among men, it does not approach the male unionized rate of 30 percent.[28/]

In 1970, women's average expected work life was 23 years compared to 40 years for men, in part because women usually have interruptions in their employment.[29/] Longitudinal surveys and cross sectional data (table 2 in Appendix B) indicate that many women leave the paid labor force for homemaking responsibilities, including bearing and raising children. Women who work for pay prior to marriage or the birth of their first child tend to reenter the market when their child care activities are finished.[30/] However, this interruption in paid employment means that they will not, on average, "catch up" to men in acquiring work experience or tenure.

Second, women workers are more likely to work part-time, less likely to have union status, more likely to be employed in small firms and more often fill positions in the low paid industries and occupations--characteristics associated with low pension coverage. Separately, these characteristics would not completely explain the

difference in pension coverage between the sexes, but together, these factors account for a large portion of the difference in women's and men's coverage rates. For example, as table 7 shows, the pension coverage of relatively advantaged women workers--union members in large firms--is nearly comparable to that of similarly situated males in the same industry. However, less than 10 percent of female workers are in this group.

According to a 1972 survey[31/] and preliminary results presented to the Commission from a 1979 survey,[32/] private pension coverage has not expanded significantly for either men or women during the 1970s. In addition, men continue to be covered by pension plans more frequently than women. In the private sector in 1979, 50 percent of men compared with 31 percent of women were covered. In the public sector, 83 percent of the men compared with 70 percent of the women were covered.[33/]

Most women will benefit from private pensions if pension coverage expands to groups who normally have low coverage--those in small firms and in nonunionized low-paid industries and occupations--or if a greater number of women are employed in large unionized firms, a change requiring a radical shift in women's typical employment pattern.

Third, some permissible pension plan rules and provisions adversely affect workers with characteristics typical of women workers. ERISA, enacted in 1974, set many new minimum standards for pension plan provisions dealing with coverage and benefits to worker. Pension plans may, of course, be more generous than the law requires. While ERISA standards help women they still permit provisions that will continue to restrict pension entitlements and benefits for more women than for men workers. Seven common plan provisions, including five minimum standards specified under ERISA, are discussed below. The ERISA standards are discussed in more detail in Appendix C.

TABLE 7

COVERAGE RATES BY INDUSTRY AND SEX, BY SELECTED EMPLOYMENT CHARACTERISTICS: PRIVATE WAGE AND SALARY WORKERS

| Industry | Employees Covered By Union Contract and in Firms With 500 + Employees | |
|---|---|---|
| | Men | Women |
| Manufacturing | 90% | 80% |
| Transportation, Communication, Utilities | 78 | 75 |
| Trade | 73 | 67 |
| Service | 65 | 60 |

SOURCE: Testimony before the Commission by Gayle Thompson Rogers on preliminary results from the 1979 Survey of Pension Plan Coverage, supplement to the May Current Population Survey.

First, under the "the rule of parity", pre-break years of service under a plan may be forfeited by a nonvested employee if the employee returns to the employer after an absence which equaled or exceeded the length of pre-break service. It is not known how many women who leave paid employment to raise children return to the same employer, but those who do may forfeit pension credits. A study in 1963 found that after the birth of their first child, women left the paid labor force for an average of 10 years and that each additional child meant three more years at home.[34/] Since 1963, fertility rates have sharply declined and many more women with preschool children are working so that the length of interruptions from the paid labor force has probably been greatly reduced. Nonetheless, the length of a woman's absence from the labor market still may exceed her pre-break service, thereby causing the loss of credits for years worked before her first child.

Second, women who return to the same employer when reentering the market are disadvantaged by age and service requirements for plan participation. Plans may require employees to be 25 years or older to participate in the plan. Many women under age 25 are working before the birth of their first child. This rule shortens women's credited pre-break service and allows even fewer years to complete child care responsibilities and return to work before credits are lost.

Third, employees who work less than 1,000 hours per year may be excluded from a plan. In 1977, over 30 percent of female employees but only 12 percent of male employees worked less than 1,000 hours.[35/]

Fourth, most workers in defined benefit plans face a 10 year service requirement to gain full entitlement to benefits. Women's job tenure generally is shorter than men's and more women than men fail to meet the vesting qualifications. Preliminary estimates from a recent survey show that 41 percent of women compared to 51 percent of men who were covered by a pension plan had vested rights.[36/]

Fifth, benefit formulas that explicitly integrate with social security result in lower benefits for many women. Integrated pension formulas explicitly recognize an employee's social security benefit by using either a step-rate formula or a direct offset formula. A step-rate formula provides increasing pension accrual as income increases. In some cases, no credit is given for income below the social security taxable wage base. Such a formula would produce proportionately greater employee pension benefits for high income workers. A direct offset plan reduces the employee pension by a direct percentage of the individual's initial social security benefit. As low-income and short-service workers, women receive proportionately higher social security benefits and proportionately lower employee pensions.

Sixth, backloaded pension formulas provide relatively lower benefits to women workers. Backloaded pension formulas provide greater pension amounts for later years of employment compared with earlier years of employment. For example, the federal civil service pension plan provides a benefit equal to 1.5 percent of earnings for each of the first five years of service, 1.75 percent of earnings for each of the next 10 years of service, and 2.0 percent of earnings for the remaining years of service. Hence, a worker with 15 years of service at retirement receives a benefit equal to 25 percent of preretirement income, but a worker with 30 years of service receives 55 percent. Workers with shorter employment receive benefits that are proportionately less in backloaded pension plans.

Seventh, the use of sex-distinct mortality tables in defined contribution plans results in lower monthly benefits (or higher contributions) for women than men. Women, on an aggregate basis, are expected to live an average of four years longer than men at age 65 and, therefore, a given amount of money for retirement purposes must last longer for women than men. Therefore, compared with men with the same contributions and retirement age, women receive smaller monthly benefits in some plans. The use of sex-distinct mortality tables has been challenged on the grounds of

sex discrimination. Although several lower courts have ruled this practice unlawful, the Supreme Court has not made a definitive ruling on the use of sex-distinct tables. However, TIAA-CREF, the largest employer with a defined contribution plan, has recently replaced sex-distinct tables with unisex tables.

Options for Change

Expanding the Joint and Survivor Option. Several measures have been suggested as methods of encouraging greater survivor protection. Much controversy surrounds the fact that employees may decide to elect out of the survivor benefit option without consulting their spouses. It is argued that spouses should have a voice in or at least be informed of this decision. Some proposals would require joint and survivor annuities for all married people, automatically provide survivor benefit protection unless both spouses agree not to take the joint and survivor annuity, or inform both spouses of the terms for the joint and survivor provision as well as the election by the worker.

Elimination of the provision that prevents divorced spouses from receiving survivor protection could prevent hardship to many women. In some cases, the husband may wish to provide a survivor annuity to his former wife, but is prevented from doing so by the pension plan provisions. Without this provision, the courts would have greater flexibility in divorce settlements.

The Commission recommended in its interim report that the joint and survivor option be automatic for all married and divorced persons. In order to refuse the election, both husband and wife (and divorced spouses) would have to sign a waiver that is witnessed by the plan representative. The staff will investigate administrative problems with this recommendation. The Commission believes it is advisable that the waiver be witnessed by a plan representative in order to prevent abuses. Depending on how many couples choose to waive the option, this could significantly increase administrative procedures in some companies.

Several legislative proposals before Congress would provide automatic survivor benefit to spouses of workers who die before retirement with vested benefits. A recent Labor Department study estimated that automatic preretirement coverage would provide benefits to less than an additional 1 percent of widows age 55 and over. The average cost to employers who do not now provide this protection was estimated at an additional 4 percent of plan costs.38/

Opponents object, arguing that employer costs would increase and that if preretirement survivor benefits were required from the pension plan, then employers may respond by reducing group life insurance for their employees. It is expected that most spouses would prefer the immediate lump sum insurance benefit. Life insurance has the additional advantage of being inexpensive for young employees who are least likely to have survivor benefit coverage under the retirement plan.

However, life insurance protection would not apply to workers who leave employment but have a vested pension benefit. Once workers leave their employer, they are terminated from the group life insurance contract. Therefore, if the worker dies before retirement, the spouse is likely to receive no compensation from either the worker's prior employer or the pension plan in which he is vested.

The Commission recommended in its interim report that spouses of employees who die before retirement with a vested benefit should receive some survivor benefit, either from the pension plan or from life insurance. The staff will investigate the appropriate relationship between the two forms of survivor protection.

Earnings Sharing. An earnings sharing approach in employee pension plans would require that a property right in all pension assets acquired during marriage is divided equally between the spouses upon divorce. There has been explicit recognition of an earnings sharing approach to earned pension benefits in recent divorce settlements, particularly in community property states. There are several issues that need to be addressed if pension entitlement is split, including: how to allocate the pension

between the spouses, whether receipt of the nonemployee's pension share should be immediate or deferred and who should administer the distribution of the pension shares. While accepted practices are developing in California, no national consensus exists on pension entitlements upon divorce. These unresolved issues, which are the subject of the following discussion, are major obstacles to earnings sharing in other states.

In an attempt to encourage an equitable approach to dealing with spouse's pension rights in a divorce situation, the Commission recommended in its interim report that pensions be viewed as property. The Commission did not discuss issues related to implementing the recommendation and will consider them at a later date.

In some instances, allocating the pension entitlement between the spouses is not difficult. For example, earnings sharing is straightforward when the marriage exists during the employee's entire service under a plan. Assuming that marriage is an equal partnership, each spouse would receive one-half of the employee's pension.

When the pension is fully vested in a defined contribution plan, the account balance accrued during marriage can be equally divided between the spouses. When the account balance is not vested the courts have, rather arbitrarily, assigned a value to the nonvested benefit or have not valued the pension until it was vested.[39/] The latter approach delays the final divorce settlement.

Under defined benefit plans, allocating the pension is more complicated if some employment occurs either after or before the marriage. The difficulties arise in determining what value should be assigned to the pension accrued during marriage in plans where that value changes periodically until the worker retires. This occurs in final-average pay plans and plans that are amended prior to retirement. In final pay plans, the value of all service is calculated using the final average salary rate at retirement, which is typically the employee's highest rate due to inflation adjustments and merit increases. Similarly, plans that are amended prior to retirement may increase the value of a pension accrued during past service.

There are two general methods being used in California for allocating the pension entitlements in defined benefit plans: the so-called "time-rule" method and the "benefits-rule" method. The time-rule method treats the pension accrued at the time of allocation as if it were earned in equal parts each year and it divides between the spouses the amounts earned during the years of their marriage. For example, if a $1,000 per month pension was earned over a period of 40 years, 10 of which were spent in marriage, the nonemployee spouse would be awarded $125 per month ($1,000 multiplied by one quarter and divided by two). Recent California court decisions have allocated the pension entitlement according to this method[40/] and it has been proposed in Congressional legislation for federal employee retirement plans.

Under the benefits-rule method, the nonemployee spouse is awarded half of the difference between the employee's credited accrued benefit at the time of marriage and the benefit at the time of divorce. For example, if at the time of marriage the employee's accrued pension (determined as though the employee terminated his employment at that point of time and the benefit was fully vested) was $20 per month and at the time of the divorce the employee's accrued pension was $200 per month, the nonemployee spouse would be awarded $90 per month (one-half of $180). This value may be more or less than that determined under the time-rule method.

A related though distinct consideration in allocating the pension benefit is whether the spouse's pension share is taken immediately at the time of divorce or whether receipt is deferred until retirement. If the benefit is taken immediately, then the present value of the accrued benefit to date is calculated. Either the benefits-rule method or the time-rule method (applied only to past service) can be used. No future pay or service are assumed. If the benefit is deferred until retirement, either allocation method may be used, but the time-rule method considers the pay and service of the worker since the divorce because the final pension paid to the employee, rather than the pension accrued at the time of divorce, is allocated between the spouses.

The time-rule and benefits-rule methods may result in significantly different values for the pension accrued during marriage, especially when the nonemployee spouse defers receipt until retirement. Figure 4 indicates the nonemployee spouse's monthly benefit under both the time-rule and benefit-rule methods for marriages covering various periods of an employee's career. This example assumes a typical final-pay defined benefit plan where the employee completes a 30-year career. Also, it is assumed that the former spouse defers receipt until retirement. Because receipt is deferred, the time-rule calculations take into account increased pay and service after the divorce.

As shown in Figure 4, the time-rule method produces the same pension value for the spouse regardless of when the marriage occurred. Therefore, a spouse married during the first 10 years of an employee's career would accrue the same interest in the employee's pension as a spouse married in the last 10 years of the employee's career.

The benefits-rule method, on the other hand, distinguishes between different years of marriage in calculating the former spouse's share of the pension. Under the benefits-rule method, the pension accrued generally is much smaller for marriages occurring during the early years of employment than during the latter years because the method does not consider future pay or service in determining the value of the benefit. In final pay plans, where the value of all prior service benefits increases with an increase in pay, the benefits-rule method assigns the increase to the year in which the pay raise occurs. In this example, salary increases are assumed to rise linearly. Therefore, the latter years of employment show a much larger accrual value than the earlier years of employment.

There are several considerations in determining whether the nonemployee spouse should take an immediate settlement or defer benefits until retirement. As discussed above, deferring receipt permits future pay and service to be taken into account if the time-rule method is used. In addition, deferral of the pension payment usually has the

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advantage of providing retirement income to the spouse and passing on to the spouse postretirement benefit increases adjusting for inflation.

On the other hand, immediate payment of the pension share has the advantage that the pension issue is resolved at settlement, avoiding continuation of a possible acrimonious relationship between the former spouses. Furthermore, the nonemployee spouse is assured payment. If payment is deferred, the nonemployee spouse assumes several risks. The pension plan could terminate with insufficient assets, which could result in nonpayment to some of the beneficiaries. The death of the employee spouse before retirement could result in nonpayment to the nonemployee spouse. This latter concern, however, would be eliminated under the Commission's recommendation that divorced spouses be included in survivor protection.

Another issue in divorce settlements is whether the employee or the employee's pension plan should be responsible for paying the nonemployee spouse's share of the pension benefit. Both practical and legal issues need to be considered for this decision.

If the spouse's share of the pension is deferred until the employee retires, then either the employee can provide the former spouse with a portion of the pension or the pension plan can divide the employee's pension according to the specifications in the divorce proceedings and mail two separate checks to the spouses. A disadvantage of having the employee distribute the pension to the former spouse is that the payment is subject to evasion. This action, though illegal, especially could be prevalent when retirement occurs many years after the divorce. On the other hand, requiring the pension plan to provide two payments would increase administrative costs for the plan.

If the spouse's share of the pension is paid immediately, then generally at divorce the employee in effect assumes responsibility for payment of the spouse's share of the pension by transferring to the spouse other property of equal value. An alternative to current practice is to have the pension plan make an immediate lump-sum distribution

to the spouse based on the employee's accrued benefits. To encourage the use of this income for retirement purposes, the lump-sum distribution could be placed in Individual Retirement Accounts (IRAs), permitting deferred taxes until the spouse reaches old age. This approach would require changing tax rules governing plan distributions and IRAs.

Whether the spouse's pension payment is immediate or deferred, there is some apprehension about requiring pension plans to administer the decision reached in a divorce settlement. It can be argued that employers should not be concerned about their employees' marital status. Involving the employer in a worker's divorce settlement, which could and probably would require further administrative work, promotes an employer's concern about the worker's marital status.

A legal issue also arises in this area. ERISA prohibits the assignment of a pension to anyone other than the employee. It is not clear, however, whether this prohibition applies to employees' families. In almost all court cases in which this objection has been raised, ERISA is interpreted as not applying the prohibition to an employee's spouse.[41/] Furthering this view, in one case the U.S. Department of Justice filed a brief as a friend of the court stating that ERISA does not prohibit assignment to the employee's family.[42/] Legislation proposed by the original sponsors of ERISA, Senators Williams and Javits, specifically stated that court-ordered alimony or support payments should not be affected or prohibited by ERISA's anti-assignment provision.[43/] Therefore, while the anti-assignment provision in ERISA does not appear to be an obstacle for involving the pension plan in payments to divorced spouses, there may continue to be a legal battle until the Supreme Court specifically rules on the issue or new legislation is passed.

Any recommended policy with regard to property rights in pensions for marital dissolutions must consider the perogatives of states and state courts in the family law area. It is important to recognize earned pension rights as property and to achieve a

climate where both the amount and value of pension benefits are determined in a reasonable and proper manner considering all pertinent issues.

Reduce Restrictions on Accrual of Pension Benefits. Women workers are particularly affected by various rules common in pension plans that limit benefit accruals to employees with long and continuous employment. Eliminating or reducing these restrictions, assuming no other changes, would increase pension payments to all workers, especially women workers. In conjunction with increasing benefits to more workers, employer costs would increase as well. Employers might respond to these changes by discontinuing their pension plans or reducing future benefits to all workers.

Some restrictions in pension plans particularly affect women workers because often they have discontinuous or partial attachment to the labor force, due to child care activities. Therefore, women are especially vulnerable to break-in-service rules, to participation requirements, and the 1,000 hours requirement. The results of these provisions are not likely to disappear in the future if women continue to play a major child-rearing role.

Formulas that explicitly integrate with social security, formulas that backload benefits, and vesting requirements affect women because of their low wages and short job tenure. While these employment effects in part result from women's interrupted work careers, it is expected that women's status and participation in the labor market will continue to improve. The low benefit accrual stemming from these provisions, then, could be self-correcting. However, inadequate retirement income for older women remains and as long as women's position in the labor market does not improve, women will continue to experience higher rates of poverty in old age than men.

Changes to these latter provisions could either increase costs significantly, force employers to readjust other aspects of their employee compensation packages, or result in a reduction in other workers' benefit levels over time. A full investigation of the effects these actions would bring requires further study.

## III. CONCLUSION

The U.S. pension system has not provided adequate income to many elderly women and, without change, probably will not provide adequate income to a large segment of aged women in the future. While younger married women now experience higher rates of labor force participation, this will not necessarily insure their financial security in old age. Many women may still interrupt their work careers to raise children. This can result in inadequate retirement income for those who spend part of their careers as homeworkers and who later become divorced or widowed.

Questions of equity arise in both social security and employee pension plans. Presently social security favors the one-earner couple, which is a minority in today's society. Gains in women's employment do not always result in increases in their social security benefits. This is especially problematic for survivors of two-earner couples.

Employee pension plans traditionally have emphasized benefits for long-service and high-income workers. Short-service and low-income workers, which many women are, may receive little or perhaps no benefits on the basis of employment under a plan. Plan provisions affecting the distribution of pension income within the family also have been questioned. Divorced and widowed people often do not share in the pension asset that their former spouses acquired during marriage.

Proposals to improve the treatment of spouses under social security include those which would provide for child care drop-out years, explicit homeworker credits and earnings sharing, which could be combined with a double decker system. An earnings sharing approach is most comprehensive because it eliminates the spouse's benefit, directly confronts the problems of divorced spouses and with suitable modifications can deal adequately with survivors.

It is expected that more women in the future will receive income from employee pension plans in their old-age. There have been recent changes in pension plans to improve survivor protection and to reduce restrictions in vesting and participation requirements. Because the survivors of workers are most often women and because women's interrupted work patterns make them particularly susceptible to pension plan restrictions, further changes in these areas could prevent financial hardship to many women in retirement. In addition, divorce settlements are just beginning to deal with pensions earned by the spouses during the marriage, though many legal and actuarial issues need resolution.

Before social security and employee pension plans can adequately serve the retirement needs of tomorrow's elderly population, these programs need to recognize the changing work patterns and family roles of both women and men. Increased labor participation by women, career interruptions by mothers and fathers and high divorce rates require that the retirement income systems accommodate a variety of lifestyles.

## APPENDIX A [1]

## GENDER-BASED DISTINCTIONS IN THE SOCIAL SECURITY LAW

Currently the Social Security Act provides that men and women receive different treatment in the following circumstances:[2]

1. Divorced Men and Women: Although benefits are provided for aged divorced wives, aged divorced widows, and disabled divorced widows, the statute does not provide benefits for aged divorced husbands, aged divorced widowers, or disabled divorced widowers (Social Security Act, Sections 202(b)(1), (c)(1), (e)(1), and (f)(1));

2. Young Fathers and Mothers: Benefits are payable to young wives, widowed mothers, and surviving divorced mothers who have children entitled to benefits in their care, but not to young husbands, widowed fathers, or surviving divorced fathers in similar circumstances (Social Security Act, Sections 202(g)(1), (b)(1), and (c)(1));

3. Remarriage of a Surviving Spouse Before Age 60: A widow who remarries before age 60 may receive benefits on a deceased husband's earnings if she is not married when she applies for benefits, while a widower who remarries before age 60 cannot get such benefits, even if the subsequent marriage has terminated (Social Security Act, Sections 202(e)(1) and (f)(1));

4. Transitional Insured Status: When Congress enacted the transitional insured status provisions in 1965 to provide special payments for persons who had not been able to work in covered employment long enough to qualify for benefits, wife's and widow's benefits were included in the provisions, but husband's and widower's benefits were not (Social Security Act, Section 227);

5. Special Age-72 Benefits: When both members of a couple are receiving special age-72 payments, the wife's payment is equal to one-half of the husband's payment even though each member must qualify for the payment individually (Social Security Act, Section 228(b));

6. Benefits For Spouses of Disabled Beneficiaries: If a disabled male beneficiary who is married to a dependent or a survivor beneficiary ceases to be disabled, the benefits of his spouse are terminated; however, if the disabled beneficiary is a female whose disability ends, the benefits to her spouse do not end [3] (Social Security Act, Section 202(d)(5) et al);

[1] This is directly exerpted from Appendix D of the 1979 Social Security Advisory Council report.

[2] It should be noted that some of the gender-based distinctions remain in the statute, but are no longer implemented in fact because of successful challenges in the courts.

[3] For example, where two beneficiaries who have been disabled since childhood marry, their benefits continue; if the male recovers from his disability both benefits are terminated, while benefits for the male continue if the female recovers. Similarly, when a disabled worker is married to an aged survivor and recovers from his/her disability, termination of the spouse's benefits depends on the sex of the worker.

7. Determination of Illegitimacy: In the few jurisdictions in which illegitimate children do not have the right to inherit the intestate personal property of their mothers, a woman's illegitimate child cannot qualify for social security benefits under the same conditions as a man's illegitimate child can (Social Security Act, Section 216(h)(3));

8. Waiver of Civil Service Survivor's Annuity: A widow can waive payment of a federal benefit attributable to credit for military service performed before 1957 to be able to have the military service credited toward eligibility for, or the amount of, a social security benefit, but a widower cannot (Social Security Act, Section 217(f)); and

9. Self-Employment in Community Property States: The income from a business operated by a husband and wife in a state which has a community property statute is deemed to belong to the husband unless the wife exercises substantially all of the management and control of the business (Social Security Act, Section 211(a)(5)(A)).

## APPENDIX B [1/]

## PROBLEMS WITH THE SOCIAL SECURITY SYSTEM

### Discussion of Issues

This section discusses the major issues that have arisen under social security as a result of the increased labor-force participation of married women, the higher divorce rate, and the changing views about the roles of women. These issues can be divided into two general categories.

The first category concerns the adequacy of protection for women in various circumstances. The second category concerns the equitable treatment of different groups of beneficiaries and of contributors to the program. The issues are thus divided according to the adequacy and equity goals of the social security program discussed in the introduction to this chapter. Most of the issues are related to whether benefits for spouses should be based on the concept that such a spouse is a dependent of a paid worker.

### Issues Related to Adequacy

The first category of issues concerns inadequacies and gaps in protection for women who spend all or a portion of their adult lives as homemakers. The issues generally arise from the growing acceptance of the perception that each spouse is an equal partner in a marriage and that each makes a valuable contribution to the marriage as a homemaker, a paid worker, or both.

1. The averaging period

   In order to assure that a person who has worked in covered jobs and paid social security taxes for many years gets a higher benefit than a short-term worker, earnings are averaged over the period the worker could reasonably be expected to have worked in covered employment. This method of computing benefits generally results in higher benefit amounts for workers who have had a longer period of work in covered employment.

   For a person reaching age 62 in 1979, retirement benefits will be based on indexed earnings averaged over a 23-year period. In 1991 and after, retirement benefits will be based on earnings averaged over a 35-year period.

[1] This is directly exerpted from a report by the Social Security Administration, Social Security and the Changing Roles of Men and Women.

This long averaging period generally results in lower average earnings for women than for men because married women typically spend time out of the paid labor force in homemaking and child-care activities. Table 1 shows the labor-force participation rates of married men and women.

Table 1

Labor-Force Participation Rates
of Married Men and Women
Living with Their Spouses

| Year | Percent in Labor Force | |
|---|---|---|
| | Men | Women |
| 1940 | 91% | 14% |
| 1950 | 90 | 22 |
| 1960 | 89 | 31 |
| 1970 | 86 | 40 |
| 1978 | 82 | 48 |

The labor-force participation rates of married women are lower for those with children, particularly for those with young children. Table 2 shows the labor-force participation rates of married women under age 55 with a husband present in the household by whether children were present and by age of child.

Table 2

Labor-Force Participation Rates of Married Women Who are under Age 55 and Living with Their Husbands

| Year | Total | No Children under 18 | With Children, by Age of Youngest 6-17 | With Children, by Age of Youngest under 6 |
|---|---|---|---|---|
| 1949 | 1/ | 1/ | 26% | 11% |
| 1951 | 26% 2/ | 1/ | 30 | 14 |
| 1959 | 34 3/ | 52% | 40 | 19 |
| 1970 | 45 | 60 | 49 | 30 |
| 1975 | 51 | 64 | 52 | 37 |
| 1977 | 54 | 65 | 56 | 39 |

1/ Not available

2/ 1950

3/ 1960

The percentage distribution of PIA by men and women workers who retired in 1976 is shown in Table 3. About 60percent of the women awarded worker's benefits in 1976 had PIA's of less than $220 as compared with only 21 percent of the men. In contrast, about 21 percent of the women and 64 percent of the men had PIA's of $280 or more. The difference in the percentage is due largely to the fact that women spend a considerable part of their working years in childcare and homemaker activities, and, when they do work, their wages are considerably lower than those of men.

Table 3

Distribution of Men and Women
Receiving Benefits at Various PIA Levels
Based on Retirements in 1976

| PIA | Percentage Distribution 1/ Men | Women |
|---|---|---|
| Up to $159.90 | 10% | 37% |
| $160.00-219.90 | 11 | 23 |
| 220.00-279.90 | 14 | 19 |
| 280.00-339.90 | 25 | 13 |
| 340.00 or more | 39 | 8 |

1/ Totals do not add to 100 percent due to rounding.

2. Divorced persons

Divorced women may have little or no social security protection in their own right and may have social security protection only in the form of dependent's benefits based on their former husband's earnings.

The following concerns have been raised about the protection of divorced women who were full-time homemakers, worked in low-paying jobs, or worked only for a short period during the marriage:

a. A divorced person has no social security protection based on the marriage if it lasted less than 10 years even though it is during this 10-year period that a married women is most likely to leave the paid labor force to raise children. (Prior to 1979, the marriage had to last at least 20 years in order for the divorced spouse to get benefits.)

b. The divorced spouse's benefit of 50 percent of the former husband's PIA may be inadequate

for a person living alone since the spouse's benefit was intended as a supplement for a married couple. 6/

c. A divorced homemaker cannot receive divorced spouse's benefits until her divorced husband reaches age 62 and retires even though she is age 62 or over.

d. A divorced person's social security benefit as a worker may be low because of time spent out of the paid labor force during the marriage.

The last three of these concerns also apply to separated homemakers.

3. Aged surviving spouses

The issue with regard to aged widows and widowers is whether social security should assume a greater role in providing protection for aged surviving spouses (most of whom are widows). This issue arises because aged widows depend primarily on social security for support. As a group, they are likely to be poor. In 1976, the income of 30 percent of aged widows was below the poverty threshold as compared with the income of 9 percent of aged married couples.

Aged widows are more likely to be poor than retired married couples for a number of reasons including:

a. They are likely to have little earning capacity because of their advanced age--the average age of widow beneficiaries is about 75 and they are the oldest beneficiary group--or because they have been out of the labor force for a number of years or were lifelong homemakers.

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6/ The situation of divorced women whose former husbands are deceased is generally somewhat better because the benefit is based on 100 percent of the deceased ex-spouse's PIA.

b. Few widows receive private pensions either because their husbands were not covered under pensions plans, or, if they were covered, the plans did not offer survivor's protection or the worker did not exercise the option to provide it.

c. Widows are more likely to receive benefits based on outdated earnings; they may reach age 60 from 5 to 10 years after their husbands died; thus their benefits are based on his earnings indexed (updated based on wage increases) to the year of his death and adjusted based on price increases thereafter. As a result, a widow's benefit is related to the standard of living that existed at the time of her husband's death, rather than the standard of living at the time she came on the benefit rolls. 7/

d. The problem of adequate income for widows is compounded by the fact that as a group they remain on the benefit rolls for many years and their benefits are adjusted according to increases in prices rather than wages, with the result that the purchasing power of the benefits is maintained. The standard of living of widows falls relative to that enjoyed by society as a whole.

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7/ Increases in wages reflect both increases in prices and increases in productivity. Adjusting a widow's benefit by prices rather than wages means that her benefit will not reflect general increases in productivity that occur after her husband dies. (Earnings of retired workers are indexed based on the year they reach age 62 reflecting both price and productivity increases.)

4. Widows under age 60

Widows under age 60 who are not disabled and who do not have entitled children under age 18 (or disabled) in their care cannot receive social security benefits. Protection has not been provided for this group on the basis that such women can be expected to work and support themselves.

As a practical matter, though, lifelong homemakers (or women who have been out of the labor force for many years) who are widowed in late middle age may find it difficult or impossible to get a job, and any job they do secure is apt to be low paying. Even widows with job skills or younger widows may have difficulty finding a job immediately or may need a period of job retraining. For these reasons, widows under age 60 may need some kind of immediate income, at least for a short time, to help them adjust to the loss of their spouse's income. The issue then is whether social security is the appropriate vehicle to provide such income.

5. Recent work requirement for disability benefits

To be insured for social security disability benefits, a person needs 5 years of covered work out of the 10 years preceding onset of disability (20 quarters of coverage out of the last 40 calendar quarters). This 20/40 requirement is in addition to the fully insured status requirement.

The 20/40 test was specifically designed to exclude people who had no recent attachment to the covered work force. In its report on the Social Security Amendments of 1954, the House Committee on Ways and Means stated:

> The earnings requirements which must be met...are intended to limit the application of this provision to individuals who have had a reasonably long, as well as recent, record of covered earnings. They operate to screen out those who have not established a reasonably substantial attachment to the labor force and those who had voluntarily

retired from gainful activity, and had not been compelled to leave the labor force by reason of their disability.

People who leave the paid labor force for 5 or more years lose disability protection even though they have spent most of their lives in paid jobs. Also, once the protection is lost, up to 5 years of covered work are required to regain protection.

Since many married women leave paid employment for 5 years or more to meet family responsibilities, they, more than men, are adversely affected by the test. In some cases, they become disabled while out of the labor force and do not meet the 20/40 test but are unable to return to work to become eligible for disability benefits. In other cases, they return to work after more than 5 years out of the labor force but become disabled before working long enough to regain disability protection. In these cases, not only will the family have to replace homemaker services that were provided by the woman, but they also lose her wages.

Since homemaker and childcare services are increasingly recognized as having an economic value, concern has been expressed that married women workers lose disability protection when engaging in such activities.

6. Disabled homemakers

Homemakers who become disabled cannot get social security disability benefits even though the loss of their homemaking and childcare services may be costly for the family to replace and there may be additional expenses connected with their disability.

The situation is probably most acute in the case of separated and divorced homemakers since they are usually not supported by their husbands or former husbands. In some cases, these women become disabled before having the opportunity to get a covered job (or to work long enough to be insured for benefits) after the separation or

divorce occurred and may or may not be eligible for benefits under the supplemental security income program.

7. Disabled widows

Disabled widows and widowers cannot receive dependent's benefits unless they are age 50 or older, and their benefits are reduced to 50 percent of the deceased worker's PIA at age 50 and to 71.5 percent at age 60. The average monthly benefit paid to disabled widows was $166 in June 1978.

8. Deceased homemakers

No protection is provided under social security for survivors of deceased homemakers. In some cases, the death of a homemaker results in a financial hardship for the family, especially if there are young children. At the death of the homemaker, the lost childcare and homemaker services may be costly to replace.

## Issues Related to Equity

The second category, addressing concerns of equity, is highlighted by the rapid increase in the number and proportion of married women who work in paid jobs. The present system of dependent spouse's benefits works well for a married couple when one spouse is a lifelong homemaker and the other is a lifelong paid worker--a situation which was much more typical in the 1930's when the social security program was established than it is today. Today many married women are employed throughout their lifetimes.

9. Duplication of protection

Women may find that the social security protection they earn as workers duplicates the protection they already have as spouses. Under the dual entitlement provision, a woman's benefit as a spouse or surviving spouse is reduced by the amount of her worker's benefit. The protection she receives based on the years she was a paid worker cannot be added to the protection based on the years she was an unpaid homemaker. As a result, an employed woman

may get no, or only slightly higher, benefits than she would have received as a dependent if she had never worked. 8/

10. One- and two-earner couples

The treatment of two-earner couples compared to one-earner couples is viewed by some as unfair. This issue arises due to the payment of dependent's benefits to spouses who never worked in covered jobs (or had very low earnings). Since spouse's benefits are not payable to two-earner couples (unless one spouse has low average indexed monthly earnings (AIME)), a two-earner couple generally receives lower total benefits than a one-earner couple with the same total AIME. Benefits for two-earner couples with the same AIME can also vary depending on the proportion of the total AIME earned by each spouse within the couple.

For example, a one-earner couple each age 62 in 1980 with AIME of $1,000 would have a benefit of $648 (a worker's benefit of $432 plus a spouse's benefit of $216). If each spouse had one-half of the earnings, the benefit would be $544. (Each would receive a worker's benefit of $272.) The initial benefits and replacement rates (benefits as a percentage of AIME) for couples with the same total AIME by the proportion of the earnings that each spouse has are shown in Table 4.

However, even if the spouse's benefit were eliminated, there would still be differences in benefit amounts for two-earner couples when the spouses earn different proportions of the couple's total

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8/ Married women who are insured for benefits in their own right have survivorship and disability protection not available to unpaid homemakers.

earnings because of the effects of the weighted benefit formula which provides higher replacement rates for workers with low average earnings and because of the existence of the minimum benefit. 9/

11. Aged survivors of one- and two-earner couples

The payment of widow's and widower's benefits equal to 100 percent of the basic benefit (PIA) of the spouse with the higher AIME leads to situations that may be regarded as unfair. The larger the proportion of the couple's earnings that was earned by one spouse, the higher the benefit for the aged survivor. As in the case of couples, the survivor of a two-earner couple generally gets a lower benefit than the survivor of a one-earner couple with the same total AIME. For example, at AIME of $1,000, the aged survivor's benefit is $432 if only one spouse was a paid worker and only $272--$160 less--if each spouse had AIME of $500 for a total of $1,000. (See Table 5 for additional examples.)

In addition, the surviving spouse of a one-earner retired couple gets as much as two-thirds of the total benefits that the couple was receiving, while the survivor of a two-earner couple gets as little as 50 percent when the spouses had equal earnings. This result occurs regardless of which spouse dies---the low paid (or unpaid) spouse or the higher earner. The 50-percent benefit cut can create a financial hardship for the survivor since basic living expenses (such as housing and utilities) do not necessarily decrease when one spouse dies.

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9/ The initial minimum benefit is $122. It is payable to workers whose AIME are less than $136. Once a person starts receiving a minimum benefit, it is automatically increased based on increases in the Consumer Price Index.

**Table 4**

Total Monthly Benefits for Married Couples under Present Law and Couple's Benefits as a Percentage of Couple's AIME by Proportion of AIME Earned by Each Spouse 1/

| Total AIME | Couple's Benefits by Proportion of AIME Earned by Each Spouse | | | | Couple's Benefits as a Percentage of Couple's AIME by Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|---|---|---|---|
| | 1-0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 | 1-0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 |
| $250 | $288 | $300 | $272 | $244 | 115% | 120% | 109% | 98% |
| 500 | 408 | 368 | 368 | 384 | 82 | 74 | 74 | 77 |
| 750 | 528 | 468 | 464 | 464 | 70 | 62 | 62 | 62 |
| 1,000 | 648 | 568 | 544 | 544 | 65 | 57 | 54 | 54 |
| 1,250 2/ | 746 | 668 | 624 | 624 | 60 | 53 | 50 | 50 |
| 1,500 2/ | 802 | 746 | 704 | 704 | 53 | 50 | 47 | 47 |
| 1,750 2/ | 859 | 794 | 784 | 784 | 49 | 45 | 45 | 45 |
| 2,000 2/ | 915 | 840 | 835 | 864 | 46 | 42 | 42 | 43 |

1/ Unless otherwise stated, all charts, graphs, tables, or examples used in this report show PIA's for January 1980 based on wage-indexed earnings for workers age 62 in 1980. Married couple's benefits are computed on the assumption of a lifelong marriage of two people both age 62 in 1980. The 1978 Trustees' Report alternative II economic assumptions were used in computing the benefits (without regard to any transitional guarantees provided under the 1977 amendments). The amounts actually paid in 1980 will depend on changes in the economy between now and then.

2/ AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980. (The AIME for a maximum earner age 62 in 1980 is projected to be $1,189.)

Table 5

Monthly Benefits for Survivors of Retired Couples Under Present Law and Survivor's Benefits as a Percentage of the Couple's Benefit by Proportion of AIME Earned by Each Spouse

| Total AIME | Survivor's Benefits by Proportion of AIME Earned by Each Spouse 1/ | | | | Survivor's Benefits as a Percentage of Couple's Benefits by Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|---|---|---|---|
| | 1/0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 | 1/0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 |
| $ 250 | $192 | $178 | $149 | $122 | 67% | 67% | 55% | 50% |
| 500 | 272 | 245 | 218 | 192 | 67 | 67 | 59 | 50 |
| 750 | 352 | 312 | 272 | 232 | 67 | 67 | 59 | 50 |
| 1,000 | 432 | 378 | 325 | 272 | 67 | 67 | 60 | 50 |
| 1,250 2/ | 497 | 445 | 378 | 312 | 67 | 67 | 61 | 50 |
| 1,500 2/ | 535 | 497 | 432 | 352 | 67 | 67 | 61 | 50 |
| 1,750 2/ | 572 | 529 | 485 | 392 | 67 | 67 | 62 | 50 |
| 2,000 2/ | 610 | 560 | 510 | 432 | 67 | 67 | 61 | 50 |

1/ The benefit amount is the same regardless of whether the high or low earner dies.

2/ AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

The survivor probably needs more than 50 percent of the income of the couple to maintain a similar standard of living. Therefore, the benefit for the survivor of a two-earner couple can be viewed as less adequate than the benefit for the survivor of a one-earner couple.

12. Married and single workers

The social security system provides greater protection for married couples where one spouse is not a paid worker, or is low paid, than for single workers, although all workers pay social security taxes at the same rate. Because of the spouse's benefit, a one-earner couple gets benefits that are one and one-half times the benefit of a single worker, all other things being equal.

Dependent's benefits were originally provided for unpaid spouses because it was recognized that the cost of living is greater for two persons than for one. Some have contended that the 50 percent increment for a spouse is more than is necessary to support a second person or that the additional amount for the second person should not necessarily rise as the worker's earnings rise. There is no consensus as to what would constitute an appropriate increment.

Although spouse's benefits were originally provided as a supplement for workers who had dependent spouses, this benefit could be supported on the grounds that the homemaker services performed by nonpaid spouses have an economic value. However, since the spouse's benefit is provided without any additional tax payment, it nevertheless results in differential treatment between married and single workers.

## APPENDIX C

## ERISA MINIMUM STANDARDS

**Participation Requirements**

All eligible employees age 25 or older with one year of service (or three years of service with full and immediate vesting) must be covered by the plan. However, any employee who is less than five years away from normal retirement may be excluded from pension plans that provide fixed benefits.

**Vesting Requirements**

Employers have three vesting alternatives:

**Cliff vesting**--Full vesting after 10 years of service, with no vesting before then.

**Graded vesting**--25 percent vesting after 5 years of service, 5 percent for each additional year up to 10 years, plus an additional 10 percent for each year thereafter (benefits will be 100 percent vested after 15 years of service).

**Rule-of-45 vesting**--50 percent vesting for an employee with at least 5 years of service when his or her age and years of service add up to 45, plus 10 percent for each additional year up to 5 years.

-For contributory plans, the employer portion must vest even when the employee withdraws his contributions if his accrued benefits are 50 percent or more vested.

-Benefits payable to vested former employees must be available at early retirement dates under the same age and service requirements that apply to active employees.

**Credited Service**

A year of service must be credited for employees who work at least 1,000 hours in a 12 consecutive-month period.

**Breaks in Service**

-Plans may not recognize breaks in service which are shorter than one year.

-If benefits earned before the break in service are vested, both pre- and post-break service must then be added for all purposes.

-Employees in defined benefit plans with breaks in service greater than one year with totally nonvested benefits are subject to the "rule of parity". Employees may lose credits for pre-break service when the number of years of break equals or exceeds the number of years or pre-break service.

Defined contribution plans or plans funded solely by insurance contract: If benefits are totally nonvested a 1-year break is incurred, and pre-break service exceeds the number of years of break, the plan must count pre-break service towards vesting of

benefits earned after the break, but it may provide a forfeiture of all benefits earned before the break.

In the case of partially vested benefits, if a participant incurs a 1-year break in service and then returns to employment covered by the plan, the plan is permitted to provide that the pre-and post-break service are added only for the purpose of vesting benefits accrued after the return to employment. The result is that those partially vested benefits earned before the break remain frozen at that partial vesting.

**Benefit Accrual**

A defined benefit pension plan (other than one funded exclusively through insurance contracts) must have a procedure for determining accrued benefits which satisfies one of three alternative benefit accrual formulas specified by ERISA. These formulas limit the amount of "back loading" (providing a higher rate for the accrual of benefits for the later years of service than for earlier years). ERISA does not require defined benefit plans to provide the same rate of benefit accrual for each year of service. They are allowed to provide a higher rate for the accrual of benefits for later years than for earlier years of service, but ERISA sets limits on the amount of back loading so that these plans generally are not permitted to unduly restrict the rate for accruing credits in early years and reserve the sizeable accumulations for later years. Under one of the three alternative formulas, early years of service may accrue only a specified proportionately smaller retirement benefit than later years--the amount of benefit credits for a later year of service cannot be more than 1 1/3 times the amount of benefits credited for the current years. For example, a worker could be credited with 1.5 percent of annual pay for the first 10 years and 2 percent for the remaining years. Under another formula, the benefits are allotted at a flat rate of at least 3 percent of the projected normal retirement benefit for each year of participation, to a maximum of 100 percent after 33 1/3 years of participation. The remaining alternative is to gear the accrued benefit to a worker's proportionate time under the plan, so that, for example, if an employee's maximum possible period of accrual would have been 40 years from the date of beginning plan participation to the date of the plan's normal retirement age (from 25-65), the worker starting under the plan at age 25 and working to 60 would get 35/40 (or 7/8) of the maximum credit toward a pension.

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APPENDIX B [1]

PROBLEMS WITH THE SOCIAL SECURITY SYSTEM

## Discussion of Issues

This section discusses the major issues that have arisen under social security as a result of the increased labor-force participation of married women, the higher divorce rate, and the changing views about the roles of women. These issues can be divided into two general categories.

The first category concerns the adequacy of protection for women in various circumstances. The second category concerns the equitable treatment of different groups of beneficiaries and of contributors to the program. The issues are thus divided according to the adequacy and equity goals of the social security program discussed in the introduction to this chapter. Most of the issues are related to whether benefits for spouses should be based on the concept that such a spouse is a dependent of a paid worker.

## Issues Related to Adequacy

The first category of issues concerns inadequacies and gaps in protection for women who spend all or a portion of their adult lives as homemakers. The issues generally arise from the growing acceptance of the perception that each spouse is an equal partner in a marriage and that each makes a valuable contribution to the marriage as a homemaker, a paid worker, or both.

### 1. The averaging period

In order to assure that a person who has worked in covered jobs and paid social security taxes for many years gets a higher benefit than a short-term worker, earnings are averaged over the period the worker could reasonably be expected to have worked in covered employment. This method of computing benefits generally results in higher benefit amounts for workers who have had a longer period of work in covered employment.

For a person reaching age 62 in 1979, retirement benefits will be based on indexed earnings averaged over a 23-year period. In 1991 and after, retirement benefits will be based on earnings averaged over a 35-year period.

[1] This is directly exerpted from a report by the Social Security Administration, Social Security and the Changing Roles of Men and Women.

This long averaging period generally results in lower average earnings for women than for men because married women typically spend time out of the paid labor force in homemaking and child-care activities. Table 1 shows the labor-force participation rates of married men and women.

Table 1

Labor-Force Participation Rates
of Married Men and Women
Living with Their Spouses

| Year | Percent in Labor Force | |
|---|---|---|
| | Men | Women |
| 1940 | 91% | 14% |
| 1950 | 90 | 22 |
| 1960 | 88 | 31 |
| 1970 | 86 | 40 |
| 1978 | 82 | 48 |

The labor-force participation rates of married women are lower for those with children, particularly for those with young children. Table 2 shows the labor-force participation rates of married women under age 55 with a husband present in the household by whether children were present and by age of child.

Table 2

Labor-Force Participation Rates of Married Women Who are under Age 55 and Living with Their Husbands

| Year | Total | No Children under 18 | With Children, by Age of Youngest 6-17 | With Children, by Age of Youngest under 6 |
|---|---|---|---|---|
| 1949 | 1/ | 1/ | 26% | 11% |
| 1951 | 26% 2/ | 1/ | 30 | 14 |
| 1959 | 34 3/ | 52% | 40 | 19 |
| 1970 | 45 | 60 | 49 | 30 |
| 1975 | 51 | 64 | 52 | 37 |
| 1977 | 54 | 65 | 56 | 39 |

1/ Not available

2/ 1950

3/ 1960

The percentage distribution of PIA by men and women workers who retired in 1976 is shown in Table 3. About 60percent of the women awarded worker's benefits in 1976 had PIA's of less than $220 as compared with only 21 percent of the men. In contrast, about 21 percent of the women and 64 percent of the men had PIA's of $280 or more. The difference in the percentage is due largely to the fact that women spend a considerable part of their working years in childcare and homemaker activities, and, when they do work, their wages are considerably lower than those of men.

Table 3

Distribution of Men and Women
Receiving Benefits at Various PIA Levels
Based on Retirements in 1976

| PIA | Percentage Distribution 1/ Men | Women |
|---|---|---|
| Up to $159.90 | 10% | 37% |
| $160.00-219.90 | 11 | 23 |
| 220.00-279.90 | 14 | 19 |
| 280.00-339.90 | 25 | 13 |
| 340.00 or more | 39 | 8 |

1/ Totals do not add to 100 percent due to rounding.

2. Divorced persons

Divorced women may have little or no social security protection in their own right and may have social security protection only in the form of dependent's benefits based on their former husband's earnings.

The following concerns have been raised about the protection of divorced women who were full-time homemakers, worked in low-paying jobs, or worked only for a short period during the marriage:

a. A divorced person has no social security protection based on the marriage if it lasted less than 10 years even though it is during this 10-year period that a married women is most likely to leave the paid labor force to raise children. (Prior to 1979, the marriage had to last at least 20 years in order for the divorced spouse to get benefits.)

b. The divorced spouse's benefit of 50 percent of the former husband's PIA may be inadequate

for a person living alone since the spouse's benefit was intended as a supplement for a married couple. 6/

c. A divorced homemaker cannot receive divorced spouse's benefits until her divorced husband reaches age 62 and retires even though she is age 62 or over.

d. A divorced person's social security benefit as a worker may be low because of time spent out of the paid labor force during the marriage.

The last three of these concerns also apply to separated homemakers.

3. Aged surviving spouses

The issue with regard to aged widows and widowers is whether social security should assume a greater role in providing protection for aged surviving spouses (most of whom are widows). This issue arises because aged widows depend primarily on social security for support. As a group, they are likely to be poor. In 1976, the income of 30 percent of aged widows was below the poverty threshold as compared with the income of 9 percent of aged married couples.

Aged widows are more likely to be poor than retired married couples for a number of reasons including:

a. They are likely to have little earning capacity because of their advanced age--the average age of widow beneficiaries is about 75 and they are the oldest beneficiary group--or because they have been out of the labor force for a number of years or were lifelong homemakers.

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6/ The situation of divorced women whose former husbands are deceased is generally somewhat better because the benefit is based on 100 percent of the deceased ex-spouse's PIA.

b. Few widows receive private pensions either because their husbands were not covered under pensions plans, or, if they were covered, the plans did not offer survivor's protection or the worker did not exercise the option to provide it.

c. Widows are more likely to receive benefits based on outdated earnings; they may reach age 60 from 5 to 10 years after their husbands died; thus their benefits are based on his earnings indexed (updated based on wage increases) to the year of his death and adjusted based on price increases thereafter. As a result, a widow's benefit is related to the standard of living that existed at the time of her husband's death, rather than the standard of living at the time she came on the benefit rolls. 7/

d. The problem of adequate income for widows is compounded by the fact that as a group they remain on the benefit rolls for many years and their benefits are adjusted according to increases in prices rather than wages, with the result that the purchasing power of the benefits is maintained. The standard of living of widows falls relative to that enjoyed by society as a whole.

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7/ Increases in wages reflect both increases in prices and increases in productivity. Adjusting a widow's benefit by prices rather than wages means that her benefit will not reflect general increases in productivity that occur after her husband dies. (Earnings of retired workers are indexed based on the year they reach age 62 reflecting both price and productivity increases.)

4. Widows under age 60

Widows under age 60 who are not disabled and who do not have entitled children under age 18 (or disabled) in their care cannot receive social security benefits. Protection has not been provided for this group on the basis that such women can be expected to work and support themselves.

As a practical matter, though, lifelong homemakers (or women who have been out of the labor force for many years) who are widowed in late middle age may find it difficult or impossible to get a job, and any job they do secure is apt to be low paying. Even widows with job skills or younger widows may have difficulty finding a job immediately or may need a period of job retraining. For these reasons, widows under age 60 may need some kind of immediate income, at least for a short time, to help them adjust to the loss of their spouse's income. The issue then is whether social security is the appropriate vehicle to provide such income.

5. Recent work requirement for disability benefits

To be insured for social security disability benefits, a person needs 5 years of covered work out of the 10 years preceding onset of disability (20 quarters of coverage out of the last 40 calendar quarters). This 20/40 requirement is in addition to the fully insured status requirement.

The 20/40 test was specifically designed to exclude people who had no recent attachment to the covered work force. In its report on the Social Security Amendments of 1954, the House Committee on Ways and Means stated:

> The earnings requirements which must be met...are intended to limit the application of this provision to individuals who have had a reasonably long, as well as recent, record of covered earnings. They operate to screen out those who have not established a reasonably substantial attachment to the labor force and those who had voluntarily

retired from gainful activity, and had not been compelled to leave the labor force by reason of their disability.

People who leave the paid labor force for 5 or more years lose disability protection even though they have spent most of their lives in paid jobs. Also, once the protection is lost, up to 5 years of covered work are required to regain protection.

Since many married women leave paid employment for 5 years or more to meet family responsibilities, they, more than men, are adversely affected by the test. In some cases, they become disabled while out of the labor force and do not meet the 20/40 test but are unable to return to work to become eligible for disability benefits. In other cases, they return to work after more than 5 years out of the labor force but become disabled before working long enough to regain disability protection. In these cases, not only will the family have to replace homemaker services that were provided by the woman, but they also lose her wages.

Since homemaker and childcare services are increasingly recognized as having an economic value, concern has been expressed that married women workers lose disability protection when engaging in such activities.

6. Disabled homemakers

Homemakers who become disabled cannot get social security disability benefits even though the loss of their homemaking and childcare services may be costly for the family to replace and there may be additional expenses connected with their disability.

The situation is probably most acute in the case of separated and divorced homemakers since they are usually not supported by their husbands or former husbands. In some cases, these women become disabled before having the opportunity to get a covered job (or to work long enough to be insured for benefits) after the separation or

divorce occurred and may or may not be eligible for benefits under the supplemental security income program.

7. Disabled widows

Disabled widows and widowers cannot receive dependent's benefits unless they are age 50 or older, and their benefits are reduced to 50 percent of the deceased worker's PIA at age 50 and to 71.5 percent at age 60. The average monthly benefit paid to disabled widows was $166 in June 1978.

8. Deceased homemakers

No protection is provided under social security for survivors of deceased homemakers. In some cases, the death of a homemaker results in a financial hardship for the family, especially if there are young children. At the death of the homemaker, the lost childcare and homemaker services may be costly to replace.

## Issues Related to Equity

The second category, addressing concerns of equity, is highlighted by the rapid increase in the number and proportion of married women who work in paid jobs. The present system of dependent spouse's benefits works well for a married couple when one spouse is a lifelong homemaker and the other is a lifelong paid worker--a situation which was much more typical in the 1930's when the social security program was established than it is today. Today many married women are employed throughout their lifetimes.

9. Duplication of protection

Women may find that the social security protection they earn as workers duplicates the protection they already have as spouses. Under the dual entitlement provision, a woman's benefit as a spouse or surviving spouse is reduced by the amount of her worker's benefit. The protection she receives based on the years she was a paid worker cannot be added to the protection based on the years she was an unpaid homemaker. As a result, an employed woman

may get no, or only slightly higher, benefits than she would have received as a dependent if she had never worked. 8/

10. One- and two-earner couples

The treatment of two-earner couples compared to one-earner couples is viewed by some as unfair. This issue arises due to the payment of dependent's benefits to spouses who never worked in covered jobs (or had very low earnings). Since spouse's benefits are not payable to two-earner couples (unless one spouse has low average indexed monthly earnings (AIME)), a two-earner couple generally receives lower total benefits than a one-earner couple with the same total AIME. Benefits for two-earner couples with the same AIME can also vary depending on the proportion of the total AIME earned by each spouse within the couple.

For example, a one-earner couple each age 62 in 1980 with AIME of $1,000 would have a benefit of $648 (a worker's benefit of $432 plus a spouse's benefit of $216). If each spouse had one-half of the earnings, the benefit would be $544. (Each would receive a worker's benefit of $272.) The initial benefits and replacement rates (benefits as a percentage of AIME) for couples with the same total AIME by the proportion of the earnings that each spouse has are shown in Table 4.

However, even if the spouse's benefit were eliminated, there would still be differences in benefit amounts for two-earner couples when the spouses earn different proportions of the couple's total

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8/ Married women who are insured for benefits in their own right have survivorship and disability protection not available to unpaid homemakers.

earnings because of the effects of the weighted benefit formula which provides higher replacement rates for workers with low average earnings and because of the existence of the minimum benefit. 9/

11. Aged survivors of one- and two-earner couples

The payment of widow's and widower's benefits equal to 100 percent of the basic benefit (PIA) of the spouse with the higher AIME leads to situations that may be regarded as unfair. The larger the proportion of the couple's earnings that was earned by one spouse, the higher the benefit for the aged survivor. As in the case of couples, the survivor of a two-earner couple generally gets a lower benefit than the survivor of a one-earner couple with the same total AIME. For example, at AIME of $1,000, the aged survivor's benefit is $432 if only one spouse was a paid worker and only $272--$160 less--if each spouse had AIME of $500 for a total of $1,000. (See Table 5 for additional examples.)

In addition, the surviving spouse of a one-earner retired couple gets as much as two-thirds of the total benefits that the couple was receiving, while the survivor of a two-earner couple gets as little as 50 percent when the spouses had equal earnings. This result occurs regardless of which spouse dies---the low paid (or unpaid) spouse or the higher earner. The 50-percent benefit cut can create a financial hardship for the survivor since basic living expenses (such as housing and utilities) do not necessarily decrease when one spouse dies.

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9/ The initial minimum benefit is $122. It is payable to workers whose AIME are less than $136. Once a person starts receiving a minimum benefit, it is automatically increased based on increases in the Consumer Price Index.

Table 4

Total Monthly Benefits for Married Couples under Present Law and Couple's Benefits as a Percentage of Couple's AIME by Proportion of AIME Earned by Each Spouse 1/

| Total AIME | Couple's Benefits by Proportion of AIME Earned by Each Spouse | | | | Couple's Benefits as a Percentage of Couple's AIME by Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|---|---|---|---|
| | 1-0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 | 1-0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 |
| $250 | $288 | $300 | $272 | $244 | 115% | 120% | 109% | 98% |
| 500 | 408 | 368 | 368 | 384 | 82 | 74 | 74 | 77 |
| 750 | 528 | 468 | 464 | 464 | 70 | 62 | 62 | 62 |
| 1,000 | 648 | 568 | 544 | 544 | 65 | 57 | 54 | 54 |
| 1,250 2/ | 746 | 668 | 624 | 624 | 60 | 53 | 50 | 50 |
| 1,500 2/ | 802 | 746 | 704 | 704 | 53 | 50 | 47 | 47 |
| 1,750 2/ | 859 | 794 | 784 | 784 | 49 | 45 | 45 | 45 |
| 2,000 2/ | 915 | 840 | 835 | 864 | 46 | 42 | 42 | 43 |

1/ Unless otherwise stated, all charts, graphs, tables, or examples used in this report show PIA's for January 1980 based on wage-indexed earnings for workers age 62 in 1980. Married couple's benefits are computed on the assumption of a lifelong marriage of two people both age 62 in 1980. The 1978 Trustees' Report alternative II economic assumptions were used in computing the benefits (without regard to any transitional guarantees provided under the 1977 amendments). The amounts actually paid in 1980 will depend on changes in the economy between now and then.

2/ AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980. (The AIME for a maximum earner age 62 in 1980 is projected to be $1,189.)

Table 5

Monthly Benefits for Survivors of Retired Couples Under Present Law and Survivor's Benefits as a Percentage of the Couple's Benefit by Proportion of AIME Earned by Each Spouse

| Total AIME | Survivor's Benefits by Proportion of AIME Earned by Each Spouse 1/ | | | | Survivor's Benefits as a Percentage of Couple's Benefits by Proportion of AIME Earned by Each Spouse | | | |
|---|---|---|---|---|---|---|---|---|
| | 1/0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 | 1/0 | 5/6-1/6 | 2/3-1/3 | 1/2-1/2 |
| $ 250 | $192 | $178 | $149 | $122 | 67% | 67% | 55% | 50% |
| 500 | 272 | 245 | 218 | 192 | 67 | 67 | 59 | 50 |
| 750 | 352 | 312 | 272 | 232 | 67 | 67 | 59 | 50 |
| 1,000 | 432 | 378 | 325 | 272 | 67 | 67 | 60 | 50 |
| 1,250 2/ | 497 | 445 | 378 | 312 | 67 | 67 | 61 | 50 |
| 1,500 2/ | 535 | 497 | 432 | 352 | 67 | 67 | 61 | 50 |
| 1,750 2/ | 572 | 529 | 485 | 392 | 67 | 67 | 62 | 50 |
| 2,000 2/ | 610 | 560 | 510 | 432 | 67 | 67 | 61 | 50 |

1/ The benefit amount is the same regardless of whether the high or low earner dies.

2/ AIME and benefits at these levels are not possible for one worker reaching age 62 in 1980.

The survivor probably needs more than 50 percent of the income of the couple to maintain a similar standard of living. Therefore, the benefit for the survivor of a two-earner couple can be viewed as less adequate than the benefit for the survivor of a one-earner couple.

12. Married and single workers

The social security system provides greater protection for married couples where one spouse is not a paid worker, or is low paid, than for single workers, although all workers pay social security taxes at the same rate. Because of the spouse's benefit, a one-earner couple gets benefits that are one and one-half times the benefit of a single worker, all other things being equal.

Dependent's benefits were originally provided for unpaid spouses because it was recognized that the cost of living is greater for two persons than for one. Some have contended that the 50 percent increment for a spouse is more than is necessary to support a second person or that the additional amount for the second person should not necessarily rise as the worker's earnings rise. There is no consensus as to what would constitute an appropriate increment.

Although spouse's benefits were originally provided as a supplement for workers who had dependent spouses, this benefit could be supported on the grounds that the homemaker services performed by nonpaid spouses have an economic value. However, since the spouse's benefit is provided without any additional tax payment, it nevertheless results in differential treatment between married and single workers.